

72102

CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF  
§  
§ TITUS COUNTY, TEXAS  
§  
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

JURY PANEL QUALIFICATIONS AND EXEMPTIONS

October 6, 1994

VOLUME 6 of 43 volumes

FILED IN  
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

ORIGINAL

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**FILED IN  
COURT OF CRIMINAL APPEALS**

**OCT 11 1995**

**Troy C. Bennett, Jr., Clerk**

## VOLUME 6

## JURY PANEL QUALIFICATIONS AND EXEMPTIONS

OCTOBER 6, 1994PAGE/VOLUME

APPEARANCES . . . . .	1/6
MORNING SESSION . . . . .	3/6
POTENTIAL JURORS SWORN . . . . .	4/6
1ST JURY PANEL GROUP QUALIFIED . . . . .	4/6
POTENTIAL JURORS SWORN . . . . .	32/6
2ND JURY PANEL GROUP QUALIFIED . . . . .	32/6
SECOND GROUP SEATED . . . . .	111/6
COURT ADJOURNED . . . . .	151/6
COURT REPORTER'S CERTIFICATE . . . . .	152/6

\*\*\*\*\*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

JURY PANEL QUALIFICATIONS AND EXEMPTIONS

October 6, 1994

VOLUME 6 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND  
District Attorney  
Morris County Texas  
Morris County Courthouse  
Daingerfield, Texas 75638

and

MR. RANDY LEE  
Assistant District Attorney  
Cass County Texas  
P.O. Box 940  
Linden, Texas 75563

1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III  
3 Old, Rolston & Old  
4 P.O. Box 448  
5 Mt. Pleasant, Texas 75456-0448

6 and

7 MR. LANCE HINSON  
8 Law Offices of Danny Woodson  
9 P.O. Box 399  
10 Mt. Pleasant, Texas 75456-0399  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   On the 6th day of October, 1994, the  
2 above-entitled and numbered cause came on for trial  
3 before said Honorable Court, Judge Gary R. Stephens of  
4 Midlothian, Texas, serving by judicial assignment in the  
5 District Court of Titus County, Texas, on change of venue  
6 from Morris County, Texas and the following proceedings  
7 were had:

8  
9                   (The following occurred in the presence  
10 of the potential jury panel:)

11  
12                   THE COURT: Counsel may be  
13 seated.

14                   We have summoned a number of people down  
15 here for jury service, we need all of you in the room  
16 when I start and obviously we can't get everybody in this  
17 room since we have as many of you in the hallway as we  
18 do in this room.

19                   I am Gary Stephens, I am a Judge out of  
20 Ellis County up close to Dallas. I have been assigned  
21 the case that arose over in Morris County and it is a  
22 capital murder case.

23                   What we are going to do this morning is  
24 discuss with prospective jurors the principles of law  
25 involved in a capital murder case. I will explain how

1 the jury selection starts and then we will start jury  
2 selection next week.

3 Before we do so, as I said, I must have  
4 everybody in the courtroom and I can't do it without  
5 getting rid of some of you.

6 Now, when I say "getting rid of you" I  
7 don't mean to sound like I don't want some of you but I  
8 know there's going to be several of you that have  
9 exemptions or disqualifications so what I want to do with  
10 the group in the room right now is briefly go over your  
11 qualifications in order to be jurors. I will then  
12 discuss your exemptions and any of you that believe you  
13 are exempt or disqualified I will talk to individually  
14 then I will do the same with the next group.

15 Hopefully we will then narrow this group  
16 down to where we can get all of you in the courtroom then  
17 I will start into my normal voir dire which is the  
18 explanation of the law and the procedures.

19 Now, none of you are under oath right  
20 now so what I want you to do, I know we don't have a list  
21 of everybody in the room yet but I want everybody in the  
22 room to raise your right hand to take your oath as a  
23 prospective juror.

24  
25 (Potential jurors sworn.)

1 THE COURT: You may lower your  
2 hands. Now, each of you are sworn in and every statement  
3 that you make to us will be under oath. All right. Let  
4 me get my notes out and we will go over your  
5 qualifications.

6 I'm going to introduce all of the  
7 parties after we narrow the group down so if you will  
8 just bear with me, we can't figure a quicker way to do  
9 it than we are doing it.

10 All right. In order to be a juror you  
11 must be at least 18 years of age, you just be a citizen  
12 of this state and of Titus County. You also must be  
13 qualified under the Constitution and laws to vote in  
14 Titus County. You don't have to be registered to vote  
15 but you have to be eligible to vote.

16 You also have to be of sound mind and  
17 good moral character, you must be able to read and write.  
18 You also must not have served as a juror for a six day  
19 period during the preceding three months in a county  
20 court or during the preceding six months in district  
21 court.

22 A county court is a court where you  
23 would have served with five other people, you would have  
24 had a jury of six people, a district court is a court  
25 where you would have served with 11 other people with a



1 total of 12 people on the jury.

2 So if you have been a juror in a case  
3 in the past six months and there were 11 other jurors you  
4 may not be qualified, if you have served in the last  
5 three months with five other people you may not be  
6 qualified so you need to talk to us if you have been on  
7 jury service. I don't mean being brought down here and  
8 being dismissed, I mean actually sitting on a jury and  
9 hearing a case.

10 If you have ever been convicted of a  
11 felony or if you are currently under indictment or other  
12 legal accusation of a felony or theft whether a felony  
13 or misdemeanor then you also will not be eligible to  
14 serve on the jury.

15 So if any of you have ever had a felony  
16 conviction whether you spent time in jail or whether you  
17 were on probation we need to talk to you.

18 If anyone has ever had a theft  
19 conviction we need to talk to you.

20 And theft would also include in the past  
21 few years a hot check, if you have had a hot check and  
22 that check results in a case being filed, you had to go  
23 to court on that case you may not be qualified.

24 So if you think that applies to you  
25 let's talk about it and find out whether or not you are

1 qualified.

2 Also if you are currently under  
3 indictment awaiting a trial on some felony charge or if  
4 you are waiting trial on some kind of misdemeanor theft  
5 charge you would not be qualified and we need to discuss  
6 it.

7 Now, those are the qualifications you  
8 must possess in order to be a juror, those are the  
9 "disqualifications" I guess I should say that might keep  
10 you from being a juror but you also have exemptions.

11 An exemption is something you may take  
12 on a case to case basis. It does not disqualify you,  
13 it's just a right that you have to be excused from jury  
14 service.

15 If you are over 65 years of age you may  
16 claim your exemption for the case and be dismissed. That  
17 doesn't mean that you will be removed from the jury pool,  
18 you will be brought back in when needed on other cases.

19 If you have legal custody of a child or  
20 children younger than 10 years of age and your service  
21 on the jury would require you to leave that child  
22 unattended then you may taken an exemption but if it's  
23 a two parent home and one parent normally picks the child  
24 up and if the other parent's service on the jury would  
25 not impede the ability to pick up your child then you

1 really don't have an exemption. The exemption is to  
2 protect your children.

3 So if your service would actually  
4 require you to neglect your child or children we don't  
5 want you on the jury and we want you to take this  
6 exemption.

7 If you are a student in a public or  
8 private school, college, junior college, if you are  
9 actually attending school you may take your exemption.

10 If you are an officer or employee of the  
11 legislative branch of state government then you have a  
12 right to an exemption and if you are a primary caretaker  
13 of an individual, regardless of that person's age but  
14 again, like on the child, if you have somebody else in  
15 your home that takes care of this individual then you  
16 might not have an exemption but if you are the sole  
17 caretaker or primary caretaker and your service on the  
18 jury would cause you to leave an invalid unattended you  
19 then have an exemption that we would encourage you to  
20 take.

21 Now, each of you have heard the  
22 exemptions, each of you have heard the disqualifications.  
23 You have not heard anything about "work", I cannot let  
24 you off of this jury for work reasons.

25 I anticipate that it will take us a

1 month, maybe six weeks to pick a jury. During that time  
2 period none of you will have to be down here at the  
3 courthouse from day to day.

4 You will be here most of this morning  
5 then you will be brought back for individual questioning  
6 on one day that you will probably be required to be down  
7 here another half day.

8 If you are selected for the jury you  
9 will then be sent home and told that you will be  
10 contacted and told to come back when the trial starts.  
11 If you are not selected then, of course you will be  
12 released. If you are selected you are not going to be  
13 required to stay down here, though, while we are picking  
14 the rest of the jury. You can go about your own business  
15 until the trial starts then you will be required to be  
16 here.

17 And I anticipate that the trial will  
18 last approximately two weeks so we will need whoever is  
19 on the jury to be able to give us about a two week space  
20 of their time, probably in November of this year.

21 Okay. Now, I want to excuse everyone  
22 to the hallway -- well, I don't know how I want to do  
23 this, we are going to have you -- how many people have  
24 an exemption or disqualification, raise your hand?

25 Okay. That's not as many of you as I

1 thought we might have.

2 I'll tell you what, I'll tell you what  
3 we will do, if the ones out there that are not in the  
4 room can remain quiet like you have we will just go ahead  
5 and bring forward everybody that believes they have an  
6 exemption or disqualification starting with the first  
7 row.

8 Sheriff, you just -- I will leave it up  
9 to you to bring them up one at a time.

10 What is his name?

11 A VOICE: His name is Jaime  
12 Yepez, he's exempt because sometimes we don't have anyone  
13 to keep our kids and also he cannot read or write that  
14 much of English.

15 THE COURT: Does the State  
16 have any objection to him claiming the objection?

17 MR. TOWNSEND: None.

18 MR. OLD: No.

19 THE COURT: Do you have a  
20 juror number, ma'am?

21 MR. OLD: "270."

22 THE COURT: Juror 270.

23 Excuse me just a minute. Okay, ma'am,  
24 if you will just hand that to him you are free to go.

25 Okay. We have a hearing problem, what

1 is your name?

2 THE POTENTIAL JUROR:

3 Ottinger, "O T T I N G E R."

4 THE COURT: Do you have your

5 jury summons?

6 MR. OLD: "257."

7 THE COURT: "257." And your

8 problem?

9 THE POTENTIAL JUROR: I have

10 a hearing problem.

11 THE COURT: All right.

12 THE POTENTIAL JUROR: I am

13 also on medication.

14 THE COURT: What is your

15 medication for?

16 THE POTENTIAL JUROR: Fluid,

17 I collect fluid.

18 THE COURT: Does it require

19 you to go to the bathroom often? Are you under a

20 doctor's care at this time?

21 THE POTENTIAL JUROR: Yes,

22 sir.

23 THE COURT: Would you be able

24 to sit for an hour to an hour and a half without going

25 to the restroom?

1 THE POTENTIAL JUROR: No, sir.  
2 Not when I take my medication.

3 I didn't take it this morning, I'm going  
4 to have to take it when I get back.

5 THE COURT: Were you on the  
6 first row, sir?

7 THE POTENTIAL JUROR: Yes,  
8 sir.

9 THE COURT: Could you hear me?

10 THE POTENTIAL JUROR: Yes,  
11 sir. I could hear you, I -- some.

12 THE COURT: You could see me,  
13 you couldn't hear?

14 THE POTENTIAL JUROR: Not real  
15 good.

16 THE COURT: Mr. Old, Mr.  
17 Townsend?

18 MR. TOWNSEND: I have no  
19 objection, Your Honor.

20 MR. OLD: I have no objection.

21 THE COURT: Sir, we are going  
22 to excuse you, you are free to go.

23 Thank you for coming down. I will keep  
24 your jury summons.

25

1 (A discussion at the bench out of the  
2 hearing of the jury panel.)  
3

4 MR. OLD: Judge, I think at  
5 all stages if the decision has to be made the State has  
6 to make the first decision.

7 THE COURT: But once they say  
8 they have no objection and you have an objection it's  
9 going to be bother you to tell me that you have an  
10 objection in front of the citizen?

11 MR. OLD: If I try to keep  
12 them on the jury it is.

13 THE COURT: Why don't you just  
14 tell me, if you say you don't have an objection, you  
15 don't think he's exempt, you just say, "Judge, I'm not  
16 sure that he's exempt", that lets me know you don't  
17 agree.  
18

19 (The following occurred in the presence  
20 and hearing of the potential jury panel:)  
21

22 THE COURT: Okay. Sheriff,  
23 next.

24 Sir, let me have your jury certificate,  
25 please.



1 This is "number 16, Bobby Brown."

2 Yes, sir, Mr. Brown.

3 THE POTENTIAL JUROR: All  
4 right. My wife works for Jimmy White and I have  
5 discussed this case with him.

6 THE COURT: Sir, this is  
7 normally something that has to be discussed when we bring  
8 you down for the individual questioning.

9 THE POTENTIAL JUROR: Yes.

10 THE COURT: Just because you  
11 know or think you know about the case doesn't disqualify  
12 you and that's why we have individual questioning.

13 All I can excuse you for today would be  
14 your exemption or disqualifications so we will have to  
15 talk to you about this problem individually.

16 THE POTENTIAL JUROR: Yes.

17 THE COURT: Next.

18 May I have your summons, please?

19 This is "number 125, Charles Taylor."

20 Yes, sir, Mr. Taylor.

21 THE POTENTIAL JUROR: I am  
22 leaving for the Service in six weeks.

23 THE COURT: Any objection from  
24 the State or Defendant?

25 MR. TOWNSEND: None.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. OLD: No.

THE COURT: All right, sir.

You are excused. Good luck.

How are you doing, ma'am?

THE POTENTIAL JUROR: Fine.

THE COURT: "Number 230,  
Felicia Cannon."

Yes, ma'am.

THE POTENTIAL JUROR: I'm  
under indictment for theft.

THE COURT: Are you currently  
under indictment for the charge now or have you been to  
court?

THE POTENTIAL JUROR: No.

THE COURT: And is it here in  
this county?

THE POTENTIAL JUROR: Yes.

THE COURT: Does the State  
have any objection?

MR. TOWNSEND: No.

THE COURT: Mr. Old?

MR. OLD: I didn't understand.

THE COURT: She is under  
indictment for theft, she has a pending theft case.

MR. OLD: No objection.

1 THE COURT: Let me have this  
2 if you would.

3 You are excused.

4 This is juror "A.E. Dunn, number 144."

5 Yes, sir. And your reason for not being  
6 able to serve?

7 THE POTENTIAL JUROR: I am 83.

8 THE COURT: You are free to  
9 go. You have a good day.

10 How are you doing, sir?

11 THE POTENTIAL JUROR: Fine.

12 THE COURT: "Billy White,  
13 juror 295."

14 Yes, Mr. White.

15 THE POTENTIAL JUROR: Number  
16 one; I have got prostate gland trouble, I'm taking  
17 medication, every hour, hour and a half I am up five or  
18 six times and, number two; I'm involved in a lawsuit with  
19 an insurance company, supposed to start depositions in  
20 those.

21 THE COURT: We'll be able to  
22 work around your schedule or they can work around our  
23 schedule if you are selected.

24 My concern would be your medical  
25 problem, we will normally go an hour, maybe an hour and

1 a half before we would break and if any juror needs to  
2 break before if that juror raises their hand we would  
3 certainly break for you.

4 THE POTENTIAL JUROR: I'm not  
5 saying I want to get off, I just want to be sure,  
6 normally I am up and down during the day I have to go  
7 about every hour.

8 THE COURT: It won't bother  
9 you to have to raise your hand and tell me you need to  
10 go?

11 THE POTENTIAL JUROR: No.

12 THE COURT: You really don't  
13 have an exemption I can let you take but I do appreciate  
14 you telling me about it.

15 THE POTENTIAL JUROR: I just  
16 wanted to share that with you and the lawsuit depositions  
17 are in November.

18 THE COURT: We are not even  
19 sure when we are going to start, if we get a jury in a  
20 week we will be going in a week, if it's two months it  
21 will be December.

22 THE POTENTIAL JUROR: Thank  
23 you.

24 THE COURT: This is "number  
25 374, David Stansell."

1 Yes, sir.

2 THE POTENTIAL JUROR: I was  
3 arrested for possession of controlled substance.

4 THE COURT: What is the  
5 substance?

6 THE POTENTIAL JUROR: Cocaine.

7 THE COURT: When were you  
8 arrested?

9 THE POTENTIAL JUROR: Six  
10 months ago.

11 THE COURT: Have you been to  
12 court yet?

13 THE POTENTIAL JUROR: No.

14 Mr. Old is my lawyer.

15 MR. OLD: I represent him,  
16 Your Honor.

17 THE COURT: Well, if he's got  
18 a pending felony Mr. Townsend will be prosecuting him.

19 Then I have to assume neither side has  
20 any objection to excusing him?

21 MR. TOWNSEND: No objection.

22 THE COURT: Yes, sir. I need  
23 your summons, please.

24 "64, Johnny Bennett."

25 Mr. Bennett.

1 THE POTENTIAL JUROR: When I  
2 was in Waco I was picked up on a shoplifting charge and  
3 I also am schizophrenic.

4 THE COURT: What happened on  
5 the shoplifting charge?

6 THE POTENTIAL JUROR: They  
7 took me to jail and I stayed for 30 days.

8 THE COURT: Okay. Sounds to  
9 me like you have a conviction.

10 Defense or State have an objection?

11 MR. TOWNSEND: No.

12 MR. OLD: No.

13 THE COURT: You are free to  
14 go.

15 Next?

16 Thank you, sir.

17 "368, Timothy Cheek."

18 Yes, Mr. Cheek.

19 THE POTENTIAL JUROR: I work  
20 late nights, I babysit during the day, my wife works  
21 days.

22 THE COURT: By "babysit" you  
23 mean taking care of your own child?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: So you wish to

1 claim your exemption for a child under 10?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: You are free to  
4 go.

5 MR. TOWNSEND: No objection.

6 MR. OLD: None.

7 THE COURT: "379, Ben Halley."

8 "Halley"?

9 THE POTENTIAL JUROR: Yes,  
10 sir. I am deaf in my left ear and if I'm not looking  
11 directly at somebody I don't always understand them.  
12 When they are talking directly --

13 THE COURT: But if you are not  
14 looking direct at them you will not understand them?

15 THE POTENTIAL JUROR: Not  
16 always.

17 THE COURT: Mr. Townsend?

18 MR. TOWNSEND: No objection,  
19 Your Honor.

20 MR. OLD: No.

21 THE COURT: You are free to  
22 go.

23 Thank you, sir.

24 Thank you, ma'am. "297."

25 Yes, ma'am.

1 THE POTENTIAL JUROR: I am  
2 currently enrolled at East Texas State University.

3 THE COURT: And you wish to  
4 take your exemption?

5 THE POTENTIAL JUROR: Yes,  
6 sir. I do.

7 THE COURT: You are free to  
8 go.

9 Thank you, ma'am.

10 How are you doing, ma'am?

11 "253."

12 Yes, ma'am.

13 THE POTENTIAL JUROR: I am  
14 Lesley Sandlin, I have a serious illness in my family,  
15 my younger sister had pneumonia and has been in intensive  
16 care for two weeks and she has Down Syndrome and they  
17 just released her from the hospital and my mom is 77  
18 years old and is really kind of needing some help trying  
19 to take care of her.

20 She has nurses, you know, come in  
21 to --

22 THE COURT: Is this something  
23 that is going to be ongoing or will she only need care  
24 for awhile?

25 THE POTENTIAL JUROR: No. At



1       this point they are just not sure.

2                       She was in intensive care for two weeks  
3       and I have just -- just gotten her home.

4                       My mom lives in Texarkana and she is a  
5       widow.

6                       THE COURT:     So your sister  
7       will be with your mother?

8                       THE POTENTIAL JUROR:   Yes.

9                       THE COURT:     And you are going  
10      to have to go back and forth to Texarkana?

11                      THE POTENTIAL JUROR:   If she  
12      is -- she is in her home, there's a possibility if she's  
13      not doing well that I will have to drive back and forth.

14                      THE COURT:     Do you work?

15                      THE POTENTIAL JUROR:   Yes.

16                      THE COURT:     Do you have a  
17      daytime job?

18                      THE POTENTIAL JUROR:   Yes.

19                      THE COURT:     Ma'am, the  
20      problems you have told me about actually are not a  
21      disqualification. If you were the primary caretaker such  
22      as if your sister was in your home you would be.

23                      THE POTENTIAL JUROR:   I do  
24      understand.

25                      THE COURT:     This is probably

1 something the lawyers need to go think about and it may  
2 cause them not to select you for the jury but it's not  
3 anything I need to let you go for today.

4 I wish I could.

5 THE POTENTIAL JUROR: I just  
6 wanted them to be aware.

7 THE COURT: When you fill out  
8 the questionnaire there will be some place in there, tell  
9 us again in the questionnaire about your problem and  
10 maybe we can make some arrangements for you.

11 Thank you, ma'am.

12 I am talking to someone I'm not going  
13 to let them -- until you let them go you just --  
14 otherwise I'm not going to receipt them.

15 Yes. This is "81."

16 Yes, ma'am, Mrs. Turner.

17 THE POTENTIAL JUROR: My  
18 father has just had major surgery and is in a nursing  
19 home in Mount Vernon, my mother can't drive and I'm the  
20 primary caretaker of my mother.

21 THE COURT: You wish to take  
22 your exemption?

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: Mr. Old?

25 MR. OLD: No objection, Your

1 Honor.

2 THE COURT: You are free to  
3 go, ma'am. Thank you very much.

4 I will keep this if it's all right.  
5 (Indicating)

6 "321."

7 Mrs. Thomkins.

8 THE POTENTIAL JUROR: My  
9 husband had a stroke two years ago and I have to stay  
10 with him. I don't have anyone to take care of him.

11 THE COURT: So you are asking  
12 for your exemption for taking care of an invalid?

13 THE POTENTIAL JUROR: Yes,  
14 sir.

15 THE COURT: Mr. Townsend, any  
16 objection?

17 MR. TOWNSEND: None.

18 THE COURT: Mr. Old?

19 MR. OLD: None.

20 THE COURT: You are free to  
21 go.

22 Thank you very much for coming up this  
23 morning.

24 Thank you, ma'am. "Number 39."

25 Now you may start.

1 THE POTENTIAL JUROR: I'm not  
2 a resident of this county.

3 THE COURT: A resident of what  
4 county?

5 THE POTENTIAL JUROR: "Camp."

6 THE COURT: You are not  
7 qualified, you are free to go.

8 Thank you.

9 How are you doing, ma'am?

10 THE POTENTIAL JUROR: Fine.

11 THE COURT: Let me take that.

12 (Indicating)

13 "389."

14 Yes, Mrs. Brown.

15 THE POTENTIAL JUROR: I am -  
16 - have kidney problems and I'm a diabetic and I have  
17 trouble with my bowels, controlling my bowels.

18 THE COURT: We would normally  
19 require you to sit in the jury box an hour, an hour and  
20 a half. You are telling me you can't do it because of  
21 your medical problem?

22 THE POTENTIAL JUROR: Yes.

23 THE COURT: Mr. Townsend?

24 MR. TOWNSEND: No objection.

25 MR. OLD: None.

1 THE COURT: Thank you. You  
2 are free to go.

3 Thank you, ma'am.

4 "218."

5 Yes, ma'am.

6 THE POTENTIAL JUROR: I am  
7 insulin dependent diabetic, my blood sugar is not  
8 stabilized, I have to take blood tests for my blood sugar  
9 and take a shot.

10 THE COURT: Do you take shots  
11 daily?

12 THE POTENTIAL JUROR: Yes,  
13 sir.

14 THE COURT: So if we have you  
15 on the jury you would have to go back and take how many  
16 shots a day?

17 THE POTENTIAL JUROR: Two.  
18 It depends on how it's doing that day  
19 but at least two.

20 THE COURT: Did you say you  
21 have to have a test everyday?

22 THE POTENTIAL JUROR: Well,  
23 you test it.

24 THE COURT: Yourself?

25 THE POTENTIAL JUROR: Yes,

1       sir. For blood sugar.

2                               THE COURT: Ma'am, I'm not  
3       sure that you are not able to sit, if you were can you  
4       feel -- without taking the test can you feel that  
5       something is about to occur that you need this shot?

6                               THE POTENTIAL JUROR: Yes.

7                               I feel like it right now as I am --  
8       after standing so long.

9                               THE COURT: Does stress effect  
10      you?

11                              THE POTENTIAL JUROR: Yes,  
12      sir.

13                              THE COURT: Once you begin to  
14      feel whatever you feel from this illness does it cause  
15      you to not be able to concentrate and listen?

16                              THE POTENTIAL JUROR: Yes.  
17      It makes me real sleepy.

18                              MR. TOWNSEND: No objection.

19                              THE COURT: Mr. Old?

20                              MR. OLD: No objection.

21                              THE COURT: You are free to  
22      go, ma'am.

23                              Thank you.

24                              Good morning, how are you doing?

25                              "166."

1 Yes, ma'am.

2 THE POTENTIAL JUROR: I'm in  
3 the process of moving to another county.

4 THE COURT: What county?

5 THE POTENTIAL JUROR: Camp  
6 County.

7 THE COURT: And when will you  
8 be completing this process?

9 THE POTENTIAL JUROR: This  
10 weekend.

11 THE COURT: Okay. Then you  
12 are free to go.

13 Thank you very much, ma'am.

14 THE BAILIFF: That's it, Your  
15 Honor.

16 THE COURT: Okay, folks.

17 I appreciate it, you all have been  
18 patient with me. I did not lose as many as I thought  
19 through the exemption.

20 What I would like to do is to bring in  
21 the other group to do the same thing then we are going  
22 to figure out how I'm going to talk to all of you in this  
23 small room.

24 Again, I thank you for your patience.

25 Hold on just a minute, let me talk about

1 some procedures.

2

3 (The Court conferred with the District  
4 Clerk.)

5

6 THE COURT: All right, I'm  
7 going to ask you all to excuse yourself to the hallway  
8 so I can bring in the other group and when I do bring you  
9 back in I will bring you back in in a certain order, your  
10 name will be called and you will have to take a seat in  
11 a certain order the next time but we will bring in our  
12 other group and see how many people that we have that are  
13 exempt.

14

15 (Whereupon the second group of potential  
16 jurors was called into the courtroom and the following  
17 transpired:)

18

19 THE COURT: Well, good  
20 morning. I see some unhappy faces.

21 THE BAILIFF: That was all,  
22 Your Honor. That's it, Your Honor.

23 THE COURT: I am Gary Stephens  
24 and I am a Visiting Judge out of Ellis County which is  
25 up near Dallas and you all have been summoned as



1 prospective jurors for a capital murder case.

2 You know there was a group of people in  
3 this room before you, they are also summoned as  
4 prospective jurors and obviously I can't get everybody  
5 in this room, that's why we had to bring you in as two  
6 groups.

7 What we are going to do this morning is  
8 to discuss qualifications to be a juror and I'm going to  
9 discuss with you the exemptions you may take.

10 After I discuss the qualifications and  
11 exemptions I will talk to the ones of you who believe  
12 that you are not qualified or wish to take an exemption  
13 then we will try to combine the two groups, depending on  
14 how many people are left and I will go into what we call  
15 "voir dire" which is the start of our jury selection  
16 process this morning.

17 I will discuss with the group, you and  
18 the other group either together or we may have to break  
19 into two sections but I will go over the general  
20 principles of law that apply in all criminal cases. I  
21 also then will discuss with you capital murder and the  
22 issues involved in a capital murder trial then you will  
23 be asked to fill out a questionnaire.

24 After the questionnaire is filled out  
25 you will be excused then we will bring back jurors one

1 at a time and we will probably bring in six to 10 people  
2 a day because the State and Defense both have a right to  
3 talk to you individually and they may talk to you  
4 anywhere from five minutes to an hour and a half each.  
5 We never know until the selection starts how long we will  
6 talk to a juror.

7 So this morning when you leave you will  
8 not know whether you are on the jury or not unless you  
9 have been excused. If you are excused then, of course  
10 you don't come back. If you are not excused we bring you  
11 back for that other individual selection then you will  
12 be told whether or not you are on the jury.

13 If you are selected for the jury you  
14 won't have to wait while we select the entire jury, you  
15 will be sent home.

16 Then this case will be tried probably  
17 in November, you will be given a date and told to come  
18 back.

19 When the trial does begin I anticipate  
20 that it will last probably two weeks.

21 All right. Now you know why you are  
22 here and what we are doing. I want to go, before I go  
23 over anything with you I am going to ask each of you to  
24 please stand and raise your right hands and take your  
25 oath as a prospective juror.

1 (Potential jurors sworn.)

2  
3 THE COURT: You may lower your  
4 hands, be seated.

5 Now, folks, all of you have been sworn  
6 so everything you tell me from this point on will be  
7 under oath.

8 Also when you fill out the questionnaire  
9 all of the questions are being answered under oath.

10 All right. I'm going to go over the  
11 qualifications and exemptions then we will discuss those  
12 with the people that believe that they are disqualified  
13 or want to take an exemption.

14 In order to be a juror you must be at  
15 least 18 years of age, you also must be a citizen of this  
16 state and of Titus County, you must be qualified to vote,  
17 although you do not have to be registered to vote, you  
18 also have to be of sound mind and good moral character.

19 I am from Ellis County, I don't know you  
20 people. If anybody has bad moral character come up and  
21 tell me and we can excuse you for it.

22 It normally doesn't work.

23 You must be able to read and write, you  
24 also must not have served as a juror for a six day period  
25 during the preceding three months in county court, the

1 preceding six months in a district court.

2 Now, "a district court" is a court where  
3 you would have served as one of 12 jurors, a "county  
4 court" is a court where you would have served as one of  
5 six jurors so if you have had jury service in the last  
6 six months come talk to me because you may not be  
7 qualified to sit on this jury.

8 If you have ever been convicted of a  
9 felony or if you are currently under indictment or other  
10 legal accusation of a felony then you are not qualified.  
11 If you have a theft conviction then you are not qualified  
12 or if you are under accusation of a theft you are not  
13 qualified.

14 "A theft" would include hot checks so  
15 if any of you have been unfortunate enough to maybe have  
16 some hot checks that results in you going to court you  
17 may have a theft type of conviction.

18 So if you have had any theft problem  
19 that required you to appear before a judge and go to  
20 court then talk to us because you may very well not be  
21 qualified.

22 I think I also told you if you are  
23 currently accused of a crime through legal process. I  
24 don't mean if somebody says you did something, I'm  
25 talking about if it got to the point where you have been

1 indicted by a Grand Jury or you have been investigated  
2 by the police you may want to talk to us and see whether  
3 you have a disqualification.

4 Now, a disqualification is something we  
5 can't waive. In other words, if you live in another  
6 county you are just absolutely disqualified, if you have  
7 had a felony conviction you are disqualified, it's just  
8 automatic, be sure to tell us about it.

9 An "exemption" is something you may take  
10 if you wish to take, you don't have to.

11 If you are over 65 years of age you may  
12 take your exemption for this case, you are put back into  
13 the jury pool so if you take an exemption you don't lose  
14 out on your right to sit on a jury. It's on a case by  
15 case basis.

16 So if you don't want on the jury and you  
17 are 65 tell us and you will be released.

18 If you have legal custody of a child or  
19 children under the age of 10 and your service would  
20 necessitate leaving those children unattended then you  
21 have an exemption that you may take.

22 If you are a student at a public or  
23 private school then you also have an exemption that you  
24 may claim.

25 So if anybody is going to school just

1 let us know and if you want to take your exemption you  
2 can, but again, you may waive it if you wish.

3 If you are an officer or employee of the  
4 legislative branch of state government you also have an  
5 exemption you may claim, if you are the primary caretaker  
6 of a person who is an invalid you have an exemption so  
7 if you are taking care of a family member who is an  
8 invalid, regardless of this person's age, and your  
9 service on this jury would mean that person would not get  
10 the proper care they need then you should take the  
11 exemption and let us know about it and no one is going  
12 to take issue with you.

13 All right. Now you have heard the  
14 qualifications and exemptions, what I want to do is talk  
15 to each one of you that believe that you are not  
16 qualified or that you want to take exemption.

17 We will do it row by row.

18 When you come forward bring your jury  
19 summons, hand it to me and we will get you located on our  
20 list. We want to make sure you are excused, that we know  
21 you were here so we don't send the Sheriff after you.

22 So just come up one at a time and we  
23 will try to get through as quick as we can.

24 Sheriff?

25 Of course you are going to have to let

1 the Sheriff know if you think you have an exemption. We  
2 are not going to talk to each one of you, only the ones  
3 that believe you are disqualified.

4 Come around if you would, sir, and hand  
5 me your jury summons.

6 "60."

7 Yes, Mr. Roberts.

8 THE POTENTIAL JUROR: I attend  
9 Northeast Texas Junior College.

10 THE COURT: You want to take  
11 your student exemption?

12 THE POTENTIAL JUROR: Yes,  
13 sir.

14 THE COURT: You are free to  
15 go.

16 Thank you, sir.

17 Yes, ma'am.

18 How are you doing?

19 "440."

20 Yes, Ms. Newman.

21 THE POTENTIAL JUROR: I work  
22 for the 76th and 276th Judicial District Court, I have  
23 prior knowledge.

24 THE COURT: That's not a  
25 disqualification unless both lawyers know you well enough

1 that they can excuse you, otherwise we have to bring you  
2 down and talk to you and see whether or not your job and  
3 your knowledge will disqualify you now.

4 MR. OLD: Juvenile probation?

5 MR. TOWNSEND: In Titus  
6 County?

7 THE POTENTIAL JUROR: Well,  
8 the "76th and 276th" which is "Titus County and Morris."

9 THE COURT: "And Morris  
10 County"?

11 MR. TOWNSEND: What is your  
12 job?

13 THE POTENTIAL JUROR: I was  
14 a secretary and I prepared the statistical reports and  
15 the monthly reports.

16 MR. OLD: We'll excuse her,  
17 Your Honor.

18 THE COURT: You are free to  
19 go then. Thank you.

20 THE POTENTIAL JUROR: Thank  
21 you.

22 THE COURT: How are you doing,  
23 ma'am?

24 "77."

25 Yes, ma'am. Give us your



1           disqualification or exemption.

2                           THE POTENTIAL JUROR: I would  
3           like to be exempt.

4                           THE COURT: For what? It can  
5           only be for one of those reasons that I mentioned; you  
6           are going to school or child under 10.

7                           THE POTENTIAL JUROR: I don't  
8           have any reason.

9                           THE COURT: Ma'am?

10                          THE POTENTIAL JUROR: I don't  
11           have any reason.

12                          THE COURT: You just don't  
13           want to be here.

14                          What we are going to have to do is fill  
15           out a questionnaire in a few minutes and we will look for  
16           that questionnaire then you will be scheduled for an  
17           interview and a lot of people are going to tell us they  
18           can't sit on a death penalty case but this is not the  
19           time to be able to do that. We have to put you on the  
20           witness stand where both sides can question you about  
21           your feelings about the law and ability to follow the  
22           law, that is why this morning I can only talk to you  
23           about those disqualifications and exemptions.

24                          Sorry, sorry, you will have to stick  
25           around, I will give you this back, you will have to stick

1 around for the duration. (Handed to the witness.)

2 Come forward, ma'am.

3 Thank you. (Handed to the Court.)

4 "471."

5 Yes, ma'am.

6 THE POTENTIAL JUROR: Well,  
7 I teach school and you said "an employee of the state."

8 THE COURT: Well, "state  
9 government", teachers are not disqualified.

10 THE POTENTIAL JUROR: Okay.

11 THE COURT: Sorry.

12 THE POTENTIAL JUROR: A good  
13 try anyway.

14 THE COURT: I know you have  
15 got a lot of children to take care of but that doesn't  
16 excuse you.

17 "137."

18 Yes, ma'am.

19 THE POTENTIAL JUROR: I am  
20 diabetic and I have to take a snack mid-morning and mid-  
21 afternoon. I thought you should know that.

22 THE COURT: Ma'am, we normally  
23 will be in the courtroom an hour, maybe an hour and a  
24 half, take a break and come back into the courtroom so  
25 would that fit in with your schedule if you needed to

1 take a break?

2 THE POTENTIAL JUROR: Yes.

3 If it's during the right hour.

4 THE COURT: Well, if anybody  
5 ever needs to take a break, when I don't call for a break  
6 all you have to do is raise your hand and we can recess.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: When you fill out  
9 the questionnaire there will be a question in the back,  
10 "Do you have any medical reason that you can't serve?"

11 THE POTENTIAL JUROR: Just  
12 insulin.

13 THE COURT: Yes, ma'am. But  
14 that's in the questionnaire and we will know what to  
15 focus on when we talk to you individually.

16 Thank you, ma'am.

17 Just go sit back down.

18 Good morning, sir.

19 "279."

20 Yes, sir.

21 THE POTENTIAL JUROR: I am  
22 over 65.

23 THE COURT: You are free to  
24 go.

25 Thank you, sir. I'm going to turn this

1 in. (Indicating)

2 How are you doing?

3 THE POTENTIAL JUROR: Doing  
4 just fine, Judge.

5 THE COURT: "214."

6 Yes, Mr. Sisk.

7 THE POTENTIAL JUROR: I take  
8 Class II narcotics daily. I don't know whether that  
9 would exempt me or not, I thought I might tell you.

10 THE COURT: What are you  
11 taking?

12 THE POTENTIAL JUROR:  
13 Methadone for a nerve disorder and sometimes I get so bad  
14 that I'm not really much good.

15 THE COURT: If you are under  
16 stress does that nerve disorder get worse?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: Whenever your  
19 nerve disorder gets worse does it get to the point that  
20 sometimes you are not able to concentrate on what you are  
21 doing or what is going on around you?

22 THE POTENTIAL JUROR: Yes,  
23 sir. It gets so bad, what I have got is a nerve disorder  
24 called "RSD" which is a sympathetic nerve disorder is  
25 what it amounts to, sympathetic nerves get burning and

1           hurting so bad I can't concentrate on anything.

2                           MR. TOWNSEND: No objection.

3                           MR. OLD: No objection.

4                           THE COURT: Sir, the lawyers  
5 have agreed to excuse you because of your medical reason.

6                           Good luck.

7                           Excuse me, I need to keep this. Okay.

8 Thank you. (Indicating)

9                           How are you doing, ma'am?

10                          "394."

11                          Yes, ma'am.

12                          THE POTENTIAL JUROR: I don't  
13 have no custody but I have two grandkids that I keep with  
14 me all the time.

15                          THE COURT: They live with  
16 you?

17                          THE POTENTIAL JUROR: Yes.  
18 The live with me all the time. I don't have custody of  
19 them.

20                          THE COURT: How old are they?

21                          THE POTENTIAL JUROR: Five and  
22 six.

23                          THE COURT: I believe you are  
24 covered by that exemption.

25                          Mr. Old, do you have any objection or

1 Mr. Townsend?

2 MR. OLD: I presume that she  
3 is saying the children live with her and not the parents?

4 THE POTENTIAL JUROR: They  
5 live with me. I don't have any custody of them.

6 THE COURT: They spend the  
7 night with you, they wake up with you, you just don't  
8 have legal custody?

9 MR. OLD: In fact you are  
10 raising them?

11 THE POTENTIAL JUROR: Yes.

12 MR. OLD: No objection.

13 MR. TOWNSEND: No objection.

14 THE COURT: We are going to  
15 let you take the exemption. You are free to go.

16 THE POTENTIAL JUROR: Thank  
17 you.

18 THE COURT: How are you doing  
19 this morning?

20 THE POTENTIAL JUROR: All  
21 right.

22 THE COURT: "90."

23 Yes, sir.

24 THE POTENTIAL JUROR: I have  
25 a severe closed head injury, I had a car accident in

1 1985.

2 THE COURT: And what lingering  
3 condition do you still have from that injury?

4 THE POTENTIAL JUROR: I am  
5 still on disability, I go to the hospital to see a  
6 doctor.

7 THE COURT: How often do you  
8 go?

9 THE POTENTIAL JUROR: Once a  
10 year.

11 THE COURT: You are not able  
12 to work?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: What, as a result  
15 of your head injury what are you not able to do? I mean  
16 how does it effect you?

17 I know you are disabled but does it  
18 effect your thinking ability?

19 THE POTENTIAL JUROR: Yes,  
20 sir.

21 THE COURT: Your motor skills  
22 or what, your thinking abilities?

23 THE POTENTIAL JUROR: Well,  
24 it's kind of like that guy that was up here awhile ago  
25 because of his nerves, stuff like that, if I get in a

1 bind or something like that I can't --

2 THE COURT: "Can't think?"

3 THE POTENTIAL JUROR: No, sir.

4 THE COURT: Mr. Townsend?

5 MR. TOWNSEND: No objection.

6 MR. OLD: No objection.

7 THE COURT: You are free to  
8 go.

9 Thank you, sir.

10 "260."

11 Yes, ma'am. "Mrs. Glenn."

12 THE POTENTIAL JUROR: I am  
13 going to college and I want to try to get out of this  
14 because I can't miss the classes.

15 THE COURT: You are currently  
16 enrolled in college?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: You have a student  
19 exemption and you are free to go.

20 Thank you.

21 Thank you, ma'am.

22 "370."

23 Yes, ma'am.

24 THE POTENTIAL JUROR: I do  
25 group travel for Travel Magic, we will be traveling the



1 18th of November, we are too close in to the traveling  
2 date to cancel the whole trip which would mean the loss  
3 of several thousand dollars in deposits.

4 THE COURT: All right. Ma'am,  
5 I don't -- how long will the trip be?

6 THE POTENTIAL JUROR: Four  
7 days.

8 THE COURT: I don't see any  
9 problem with you taking a trip and still being eligible  
10 to serve on this jury. It will not be going to trial  
11 before the 18th of November.

12 THE POTENTIAL JUROR: Oh, you  
13 won't?

14 THE COURT: So if you are  
15 selected as a juror you are free to take your trip and  
16 I don't see us starting this case until toward the end  
17 of November.

18 If we were to get started first we  
19 are not going to knock anybody out of a vacation that  
20 will --

21 THE POTENTIAL JUROR: This is  
22 a group trip my husband and I, just the two of us are  
23 taking a trip on the 27th of November for four days.

24 THE COURT: Four days?

25 THE POTENTIAL JUROR: Yes.

1 THE COURT: In the  
2 questionnaire that you will fill out in a little while  
3 it will ask you I think the next to the last page will  
4 ask you whether you plan to be out of the county, just  
5 list those dates and we will work around your schedule,  
6 if you are selected we will work around and if you are  
7 not we won't worry about it.

8 THE POTENTIAL JUROR: All  
9 right.

10 THE COURT: Thank you, ma'am.  
11 Good morning, ma'am, how are you doing?  
12 "Number 1."

13 Yes, ma'am, Ms. Clark.

14 THE POTENTIAL JUROR: My  
15 husband was disabled on September 2nd, he's doing okay  
16 but --

17 THE COURT: When did this  
18 happen?

19 THE POTENTIAL JUROR:  
20 September 2nd, '94.

21 THE COURT: So are you taking  
22 care of him right now?

23 THE POTENTIAL JUROR: Well,  
24 not anymore, you know, he's well and everything but we  
25 are kind of doing the business and sometimes he helps,

1       you know, he wants me to be there.

2                               THE COURT:   Ma'am, those are  
3       really not legal disqualifications that will authorize  
4       me to excuse you.

5                               We will still need to talk to you  
6       individually but if you will just put down --

7                               MR. TOWNSEND:    I believe  
8       there's an agreement.

9                               MR. OLD:    Okay.

10                              THE COURT:    If they have  
11       agreed then I'm going to agree and you are free to go.

12                              Thank you, ma'am.

13                              Thank you.

14                              How are you doing, ma'am?

15                              THE POTENTIAL JUROR:   Fine.

16                              THE COURT:    "102."

17                              Okay, ma'am.

18                              THE POTENTIAL JUROR:   I have  
19       three children and one I have to take, carry to Band  
20       after school, I don't have anyone else to do it.

21                              THE COURT:    How old is that  
22       child?

23                              THE POTENTIAL JUROR:   He's  
24       twelve.

25                              THE COURT:    Okay.

1 THE POTENTIAL JUROR: Then I  
2 have a three year old that I have to pick up after pre-  
3 school and my husband can't be there, he's working in  
4 Sulphur Springs part-time at the hospital.

5 THE COURT: So if he's at work  
6 in Sulphur Springs you have no one to pick up your three  
7 year old, is that what you are telling me?

8 THE POTENTIAL JUROR: Yes.

9 THE COURT: Unless you do it?

10 THE POTENTIAL JUROR: Right.

11 THE COURT: And you wish to  
12 take your exemption?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: State have any  
15 objection?

16 MR. TOWNSEND: No.

17 THE COURT: Defense have an  
18 objection?

19 MR. OLD: No.

20 THE COURT: You are free to  
21 go.

22 Thank you, ma'am.

23 "184."

24 Yes, ma'am.

25 THE POTENTIAL JUROR: Well,

1           number one; I'm not living in this county right now.

2                           THE COURT:   Well, then you  
3           don't -- what do you mean "right now", have you moved out  
4           of the county temporarily or permanently?

5                           THE POTENTIAL JUROR:   Well,  
6           I don't know for sure. My husband and I are separated.

7                           THE COURT:   So you are not  
8           living here anymore?

9                           THE POTENTIAL JUROR:   No.

10                          THE COURT:   Then you want to  
11           -- I assume neither side has an objection since she is  
12           not in county?

13                          MR. TOWNSEND:   No.

14                          MR. OLD:   No.

15                          THE COURT:   You are free to  
16           go.

17                                   Thank you, ma'am.

18                                   "37."

19                                   Yes, sir.

20                           THE POTENTIAL JUROR:   I have  
21           got an illness called PSC, it's a liver disease and any  
22           kind of stress related situations are not really good for  
23           me.

24                           THE COURT:   What do you mean  
25           "not really good?"

1 THE POTENTIAL JUROR: It  
2 upsets me and causes me to have some problem.

3 THE COURT: All right. This  
4 is something that both lawyers have a right to talk to  
5 you about further.

6 Mr. Townsend, do you want to talk to him  
7 further on individual voir dire or excuse him at this  
8 point?

9 MR. TOWNSEND: I will excuse  
10 him.

11 MR. OLD: I will excuse him.

12 THE COURT: You are free to  
13 go.

14 Thank you.

15 Good morning, sir, how are you doing?

16 THE POTENTIAL JUROR: All  
17 right.

18 THE COURT: Do you have the  
19 other part? I guess this is still the same number, "62."

20 What is your name?

21 THE POTENTIAL JUROR: "Wayne  
22 Baker."

23 THE COURT: Yes, Mr. Baker.

24 THE POTENTIAL JUROR: Yes.  
25 I have recently opened my own business and if I have to

1 close the doors on it I do not have any income coming in.

2 THE COURT: This is something  
3 the lawyers have a right to discuss with you at length  
4 if they want to. I'm going to have to bring you back.

5 If you will put in your questionnaire  
6 the fact that if you are not there you don't get any  
7 income.

8 THE POTENTIAL JUROR: Yes.

9 THE COURT: I'm sure it's  
10 something they will consider but I can't excuse you today  
11 for that reason.

12 THE POTENTIAL JUROR: Okay.

13 THE COURT: But I don't think  
14 either lawyer will want anybody on the jury that is going  
15 to be losing money and more concerned about their  
16 business. But again, I can't let you go today on that.

17 Okay. Here you go. (Indicating)

18 "49."

19 Yes, sir.

20 THE POTENTIAL JUROR: I'm  
21 going through some legal action now and Bird is my  
22 attorney.

23 THE COURT: Mr. Townsend?

24 MR. TOWNSEND: I have no  
25 objection to dismissing him, Your Honor.

1 MR. OLD: I do not, Your  
2 Honor.

3 THE COURT: You are free to  
4 go. Thank you.

5 THE POTENTIAL JUROR: Thank  
6 you.

7 THE COURT: How are you doing  
8 this morning?

9 THE POTENTIAL JUROR: I am  
10 doing pretty well.

11 THE COURT: "336."

12 Yes, sir.

13 THE POTENTIAL JUROR: Simply  
14 that I have used Bird on a couple of occasions as an  
15 attorney.

16 THE COURT: Is he currently  
17 representing you?

18 THE POTENTIAL JUROR: No. He  
19 does not.

20 THE COURT: All right. That's  
21 something that Mr. Townsend needs to know about, it  
22 doesn't disqualify you, if they want to excuse you they  
23 can but actually what we normally do is to let the  
24 lawyers talk to you to see whether or not it would effect  
25 your ability to be fair.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE POTENTIAL JUROR: Okay.

MR. OLD: I don't think Mr.  
Townsend opposes him.

I will state on the record that he and  
I have a very close personal relationship. I don't know  
how it would effect you.

THE COURT: If both of you  
will agree to excuse him I will excuse him.

MR. TOWNSEND: No objection.

THE COURT: Okay. You are  
free to go.

I will keep this right here.  
(Indicating)

"492."

Yes, sir.

THE POTENTIAL JUROR: I am a  
surveyor and I have got two highway contracts under  
contract and I'm supposed to be down at Carthage this  
morning on a bridge.

THE COURT: All right, sir.

THE POTENTIAL JUROR: I have  
got a road job starting Monday.

THE COURT: Business reasons  
are no excuse from this type of a jury.

We don't know when we are going to start

1 trial, we will work, we will tell you what our schedule  
2 is and you can work around our schedule or we can work  
3 around yours when we call you for the individual  
4 questioning.

5 We will certainly get you in here on the  
6 most convenient day but I cannot just excuse you for work  
7 related reasons. I will have to have that questionnaire  
8 filled out and put in there what your problem is on that  
9 at this trial and maybe we can get together and do  
10 something about it. But right now I can't.

11 THE POTENTIAL JUROR: I have  
12 got a bunch of people waiting on me today right now.

13 THE COURT: Well, I've got a  
14 bunch of people waiting on me, too.

15 Next.

16 "186."

17 Yes, ma'am.

18 THE POTENTIAL JUROR: I am  
19 going to be out of the country from November 6th to the  
20 23rd.

21 THE COURT: I don't think that  
22 is going to be when we try this case. I don't know, it  
23 normally takes four to six weeks to get the jury, we  
24 don't want to knock anybody out of a trip.

25 THE POTENTIAL JUROR: It's a

1       cruise.

2                               THE COURT:   "A cruise?"

3                               THE POTENTIAL JUROR:   Yes.

4                               THE COURT:   We will certainly  
5       work around your schedule.   Fill out the questionnaire  
6       and in the questionnaire it will ask you if you are going  
7       to be out of the county and you can tell us those dates  
8       and we'll not knock you out of the trip.

9                               MR. OLD:    I would agree to  
10       excuse her.

11                              THE COURT:   Ma'am, would you  
12       come back for just a moment?

13                              I'm   sorry.       I   don't   have   your  
14       questionnaire and I didn't remember your name.

15                              Let me have that again.

16                              "186."

17                              Ma'am, we had a little brief discussion  
18       while you were taking your seat and you are free to go.

19                              THE POTENTIAL JUROR:   Thank  
20       you.

21                              THE COURT:    Okay.    "Number  
22       3."

23                              Yes, sir.

24                              THE POTENTIAL JUROR:   I take  
25       care -- I take care of a handicapped person and she

1 wouldn't get the proper care.

2 THE COURT: Do you do it  
3 daily?

4 THE POTENTIAL JUROR: Monday  
5 through Friday.

6 THE COURT: All day long?

7 THE POTENTIAL JUROR: From  
8 12:00 to 10:00.

9 THE COURT: "12:00 noon until  
10 10:00 p.m.?"

11 THE POTENTIAL JUROR: Yes,  
12 sir. In Mount Vernon.

13 THE COURT: Mr. Townsend, any  
14 objection?

15 MR. TOWNSEND: No.

16 THE COURT: Mr. Old?

17 MR. OLD: Is it something he  
18 does for a living?

19 THE COURT: Is this your job  
20 or a family member or friend?

21 THE POTENTIAL JUROR: It's a  
22 family member.

23 THE COURT: Are you paid to  
24 do this?

25 THE POTENTIAL JUROR: No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: You just volunteer  
your time?

THE POTENTIAL JUROR: Yes,  
sir.

MR. OLD: No objection.

THE COURT: You are free to  
go.

Thank you.

How are you doing, ma'am?

"242."

Yes, ma'am.

THE POTENTIAL JUROR: I am -  
- have a back injury and I take muscle relaxants and it  
messes up my mind.

THE COURT: Do you take them  
every day?

THE POTENTIAL JUROR: Every  
day.

THE COURT: "Everyday?"

Mr. Townsend?

MR. TOWNSEND: No objection.

MR. OLD: No objection.

THE COURT: You are free to  
go.

Thank you.

1 (Short off the record discussion at the  
2 bench out of the hearing of the potential jury panel and  
3 Court Reporter.)  
4

5 THE COURT: Yes, ma'am.

6 THE POTENTIAL JUROR: My  
7 husband is involved at Lone Star Steel with those  
8 lawsuits, the personal injuries, asbestos and things like  
9 that.

10 THE COURT: I don't know about  
11 those lawsuits. Would there be anything about that that  
12 would disqualify her so far as law is concerned?

13 MR. TOWNSEND: Not that I'm  
14 aware of.

15 MR. OLD: Not that I'm aware  
16 of.

17 THE COURT: Just in the  
18 questionnaire, ma'am, so we will note that, that's not  
19 a disqualification, there's nothing in that suit  
20 apparently that has anything to do with this issue.

21 How are you doing?

22 "406."

23 THE POTENTIAL JUROR: I live  
24 in Tyler, I am a full time student at TJC.

25 THE COURT: I'm going to

1           excuse you because you are a student.

2                       You are free to go.

3                       Okay. Thank you.

4                       "264."

5                       Yes, ma'am.

6                               THE POTENTIAL JUROR: I have  
7 children under age.

8                               THE COURT: And do you work?

9                               THE POTENTIAL JUROR: Yes.

10                              THE COURT: What time do you  
11 get off?

12                              THE POTENTIAL JUROR: Like  
13 3:00.

14                              THE COURT: What do you do  
15 with your children while you are at work?

16                              THE POTENTIAL JUROR: They go  
17 to school.

18                              THE COURT: How old are they?

19                              THE POTENTIAL JUROR: Ten and  
20 11.

21                              THE COURT: And when you get  
22 off at 3:00 do you go pick them up, how do they get home  
23 from school?

24                              THE POTENTIAL JUROR: Walk.

25                              THE COURT: Is there anybody

1 at home when they get home?

2 THE POTENTIAL JUROR: My  
3 husband. But he be asleep because he work nights.

4 THE COURT: When does he have  
5 to go to work?

6 THE POTENTIAL JUROR: 8:00  
7 o'clock.

8 THE COURT: At night?

9 THE POTENTIAL JUROR: Yes,  
10 sir.

11 THE COURT: When does he  
12 normally get up?

13 THE POTENTIAL JUROR: About  
14 7:45.

15 THE COURT: So you normally  
16 are there from 3:15 on?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: And if you were  
19 to be on this jury and not able to be at home you are  
20 telling me your husband would either lose sleep or the  
21 children would be in the house without anyone to take  
22 care of them, is that correct?

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: You are really  
25 close to having an exemption, I'm not sure you are quite



1       there.

2                       Mr. Townsend?

3                               MR. TOWNSEND: No objection.

4                               THE COURT: Mr. Old?

5                               MR. OLD: No objection.

6                               THE COURT: The lawyers have  
7 agreed to excuse you.

8                               Thank you, ma'am.

9                               How are you doing, ma'am?

10                              THE POTENTIAL JUROR: Fine.

11                              THE COURT: "215."

12                              Yes, ma'am.

13                              THE POTENTIAL JUROR: I just  
14 recently started taking care of my mother who is  
15 disabled.

16                              THE COURT: Are you taking  
17 care of her in your home?

18                              THE POTENTIAL JUROR: In my  
19 home. I just moved her down here.

20                              THE COURT: What is her  
21 disability?

22                              THE POTENTIAL JUROR: She is  
23 really old and I think she is beginning to get  
24 Alzheimer's and she has diabetes.

25                              THE COURT: Do you work?

1 THE POTENTIAL JUROR: I have  
2 been but I'm not right now.

3 THE COURT: Because of your  
4 mother?

5 THE POTENTIAL JUROR: Yes.

6 THE COURT: Mr. Townsend, do  
7 you have any objection?

8 MR. TOWNSEND: No.

9 THE COURT: Mr. Old?

10 MR. OLD: None.

11 THE COURT: You are free to  
12 go.

13 Good luck with your mother, ma'am.

14 "215", did I get the right number on  
15 that?

16 "496."

17 Yes, ma'am.

18 THE POTENTIAL JUROR: Him and  
19 another guy was -- him and another guy stole --

20 THE COURT: Who is "him?"

21 THE POTENTIAL JUROR: "Mr.  
22 Wardlow."

23 Him and another boy stole my husband's  
24 truck in '91.

25 THE COURT: I guess it's fair

1 to that you have a bias?

2 THE POTENTIAL JUROR: I am  
3 afraid so. I don't think you need me.

4 MR. TOWNSEND: No objection.

5 MR. OLD: No objection.

6 THE COURT: "171."

7 Yes.

8 THE POTENTIAL JUROR: I am  
9 enrolled in school.

10 THE COURT: Where are you  
11 going to school?

12 THE POTENTIAL JUROR:  
13 Northeast Texas Community College.

14 THE COURT: You are free to  
15 go.

16 Thank you, sir.

17 How are you doing?

18 "172."

19 Yes, sir.

20 THE POTENTIAL JUROR: Mr. Old  
21 was my mother's lawyer in divorce court, it has been  
22 several years ago and also I go to school the second  
23 Wednesday of the month.

24 THE COURT: What kind of  
25 school?

1 THE POTENTIAL JUROR: It's  
2 OSHA training in Dallas.

3 THE COURT: That won't --  
4 that's not an exemption I can let you have and knowing  
5 either of the lawyers is not a disqualification unless  
6 your knowledge or friendship with that lawyer would be  
7 such that you couldn't be fair to the other side.

8 THE POTENTIAL JUROR: Okay.

9 THE COURT: Now, even though  
10 Mr. Old has represented your family would you be able to  
11 judge the facts in this case based on what you hear and  
12 not based on personalities with the lawyers?

13 In other words, knowing Mr. Old would  
14 you give that side kind of a head start?

15 THE POTENTIAL JUROR: A  
16 little, not, you know, not bad but --

17 THE COURT: Mr. Townsend, do  
18 you want to talk to him individually with the rest of the  
19 group?

20 MR. TOWNSEND: Let's talk to  
21 him individually.

22 THE COURT: Why don't you fill  
23 out that questionnaire and where it asks whether you know  
24 the lawyers tell us your knowledge of the attorney and  
25 we can decide whether to bring you back for a full

1 discussion.

2 Thank you, sir.

3 Good morning, sir. How are you doing?

4 THE POTENTIAL JUROR: Fine.

5 THE COURT: "472."

6 Yes, Mr. Freeman.

7 THE POTENTIAL JUROR: Only  
8 thing that I would know would disqualify me for this,  
9 about three or four years ago I had "theft under \$20" at  
10 Wal-Mart.

11 THE COURT: Did you go to  
12 court?

13 THE POTENTIAL JUROR: I did  
14 time and made a bond.

15 THE COURT: You did time in  
16 jail?

17 THE POTENTIAL JUROR: One  
18 night.

19 THE COURT: And you were  
20 bonded out the next day?

21 Did you ever go back to court?

22 THE POTENTIAL JUROR: No.

23 THE COURT: What happened on  
24 the case?

25 THE POTENTIAL JUROR: We just

1       paid the fine and let it be.

2                               THE COURT:     Sounds like a  
3       conviction if he paid a fine.

4                               MR. OLD:   How old were you at  
5       that time?

6                               THE POTENTIAL JUROR:   I was  
7       17.

8                               MR. OLD:   "Seventeen?"

9                               THE     POTENTIAL     JUROR:  
10       "Seventeen."

11                              THE COURT:   Does the State  
12       have an objection?

13                              MR. TOWNSEND:   None.

14                              THE COURT:   Defense?

15                              MR. OLD:   None, Your Honor.

16                              THE BAILIFF:   That's it, Your  
17       Honor.

18                              THE COURT:   All right, folks.  
19       I appreciate your patience, I don't know whether I can  
20       get everybody in here or not. The Sheriff is going to  
21       have to decide whether we are going to be able to fit  
22       everybody.

23                              THE BAILIFF:   It will be  
24       tight.

25                              THE COURT:   Some of you are

1 going to have to stand, we are going to try to squeeze  
2 everybody in here, what I'm going to have to do first is  
3 excuse you from the courtroom because I have to bring you  
4 back in in numerical order, that's why we did excuse  
5 whoever was not qualified.

6 So we are going to excuse you back just  
7 to the hallway, not out of the courthouse, then we are  
8 going to take a short break then we are going to re-seat  
9 you in numerical order.

10 If you have a high number -- excuse me,  
11 I'm backward, low number gets the seat, the high number  
12 gets to stand.

13 We will call you back in.

14  
15 (Off the record discussion at the bench  
16 out of the hearing of the jury panel and Court Reporter.)  
17

18 THE COURT: He says he has a  
19 felony conviction, he did time.

20 This is "240."

21 THE POTENTIAL JUROR: "Gerald  
22 Craddock."

23 THE COURT: Any objection?

24 MR. OLD: No objection.

25 THE COURT: You are free to

1 go.

2

3

(Recess.)

4

5

THE COURT: Let's get on the

6

record.

7

Let the record reflect that there are

8

no prospective jurors present in the room.

9

MR. OLD: The Court has

10

indicated that it did not indicate to place the calling

11

of the jurors by name and number on the record. If that

12

is not going to be done we would request that the Clerk

13

certify for the record who did not show.

14

THE COURT: All right. Would

15

it be easier to have the Clerk certify who did not show

16

or would it be easier to have the roll all on the record?

17

Let's go off the record.

18

19

(Off the record discussion at the

20

bench.)

21

22

THE COURT: Back on the

23

record.

24

I will not have the roll call on the

25

record, it is my understanding the District Clerk will



1 call the roll and the names will then be called out by  
2 the Deputy Sheriff assigned to this case to the courtroom  
3 and then I will order the District Clerk to prepare the  
4 list for both the State, Defense and the Court stating  
5 who was here and who did not appear and a list of ones  
6 excused.

7 So I will need a list with three parts.

8 Is that a problem for the Clerk's  
9 Office?

10 THE DISTRICT CLERK: No.

11 THE COURT: Let's proceed and  
12 off the record.

13  
14 (Off the record discussion.)

15  
16 THE COURT: Sheriff, how many  
17 people are in the hallway?

18 Counsel, approach the bench for a  
19 moment.

20  
21 (Off the record discussion at the  
22 bench.)

23  
24 THE COURT: Bobby, I'm going  
25 to go ahead and let you finish calling the roll so we

1 will know who is here but I don't want anyone else in the  
2 courtroom right now.

3 Go ahead and finish your roll.

4  
5 (Off the record discussion.)

6  
7 THE COURT: I call out the  
8 name "LaWyanda Jeffery."

9 THE BAILIFF: "LaWyanda?"

10 THE COURT: That's as close  
11 as I can get.

12 THE BAILIFF: No answer,  
13 Judge.

14 THE COURT: Bobby, he must  
15 have heard "67" taken off so "67, Jeffery" is not  
16 present.

17 She was here?

18 Sheriff, see if there's anyone outside  
19 whose name has not been called or number.

20 THE BAILIFF: There's nobody  
21 left outside, Your Honor.

22 THE COURT: All right. Then  
23 we will have to find out what happened to Mrs. Jeffery.

24 There are several of you obviously --  
25 let's go on the record -- there are several of you

1 obviously standing, we cannot get all of the group  
2 inside, I'm going to ask all the people in the aisle, not  
3 in the back but in the aisle to go out in the hallway.

4 I'm going to talk to this group that is  
5 seated and standing in the back.

6 While I'm talking to this group I'm  
7 going to have the outside group begin filling out their  
8 questionnaires and when I finish my comments with the  
9 second group we will send the second group out to do  
10 their questionnaires while I bring in the other group.

11 Does everybody understand what we are  
12 doing? I don't want anybody to leave for lunch, it's  
13 almost lunch time, we need to get everybody accounted for  
14 and get questionnaires before you leave the courtroom.

15 Does anyone have any questions right  
16 now?

17 The ones in the aisle go to the hallway,  
18 you will receive your questionnaires. If there's  
19 something you don't understand don't fill it out, I will  
20 explain it when you come back.

21 All right. Again I want to thank  
22 everyone for your patience, it has been a pretty trying  
23 morning for everybody and I know everybody is ready to  
24 go so I want to get started and get into why you are  
25 here.

1 All of you have been told that you are  
2 here as prospective jurors for a capital murder case, I  
3 want to again introduce myself and the parties involved  
4 in this case.

5 I am Gary Stephens, I am a Judge out of  
6 the Dallas area as I sit, I live in Ellis County, I have  
7 been assigned this case and will be picking the jury and  
8 hearing the evidence and trying the case once the jury  
9 is selected.

10 This case occurred or allegedly occurred  
11 in Morris County in Cason.

12 The case was transferred from Morris  
13 County to Titus County.

14 This District Attorney out of Morris  
15 County will handle this case and that is Mr. Richard  
16 Townsend.

17 Mr. Townsend, will you stand, please?

18 You may be seated.

19 I normally -- most of my work is in  
20 Dallas and normally I introduce everybody, ask you if you  
21 know them but I'm sure a lot of you know the lawyers so  
22 I'm going to dispense with asking you if you know them.  
23 There's a place in the questionnaire where you can tell  
24 us whether or not you know the parties involved.

25 There is another District Attorney from

1 Cass County, Randy Lee that has been appointed to assist  
2 Mr. Townsend. He will be here from time to time also.

3 The Defense is represented by Mr. Bird  
4 Old, III, he will be assisted by Mr. Lance Hinson, their  
5 client is Mr. Billy Joe Wardlow.

6 Mr. Wardlow, would you stand?

7 Thank you, sir. You may be seated.

8 Now as I told you this is a capital  
9 murder case and what we are trying to do right now is  
10 talk about some general principles of law that apply in  
11 all cases then I will get more specifically into murder  
12 and capital murder.

13 The first and most basic principle of  
14 law is the presumption of innocence. Simply because a  
15 person may have been arrested for some offense is  
16 certainly no evidence that the person is guilty. The  
17 fact that a person has been charged or indicted for a  
18 crime is no evidence against the person charged.

19 The evidence in a trial must come from  
20 the witness stand from witnesses who have been sworn to  
21 tell the truth and have been examined and cross examined  
22 by the lawyers.

23 You as a jury will decide the facts in  
24 this case based upon the evidence you hear from the  
25 witness stand. You certainly should not base your

1 verdict on the fact that a person has been arrested or  
2 is standing trial.

3 I know that all of you are here for jury  
4 service and I'm sure all of you know this is a criminal  
5 trial, you probably knew it before I started talking to  
6 you this morning and I'm sure probably, if you did not  
7 know who the Defendant was you probably talked to each  
8 other and were wondering who the Defendant was and  
9 wondering what he or she is charged with.

10 And, folks, that is perfectly normal.  
11 We all do that. But if there is anyone who is here and  
12 wonders who the Defendant is here and what he did you may  
13 very well have a preconceived idea and that's simply  
14 because a person has been charged with a crime and you  
15 are here as the juror that person must guilty.

16 And if you do have this mind-set or this  
17 presumption then you certainly are not following the  
18 basic principles of our law and that is the fact that  
19 each of us are innocent until proven guilty.

20 The terminology "presumption of  
21 innocence" is something that lawyers involved in this  
22 case take quite seriously. It's the basic cornerstone  
23 of our judicial system and if there's anyone in this  
24 group that truly cannot presume a person to be not guilty  
25 before a trial begins then you are just frankly not

1 qualified to sit on a jury.

2 Now, I have already talked to you about  
3 your qualifications and exemptions and what we are  
4 talking about now are not legal exemptions, exemptions  
5 we went over earlier are the legal exemptions that you  
6 may take in order to be on the jury, not only must you  
7 be qualified as I have discussed, not only must you  
8 either way, take or not take your exemption but you have  
9 to be qualified and understand the law. And if there's  
10 anything in the law that you don't agree with and your  
11 disagreement is such that you can't follow the law then  
12 you are not qualified and that's what jury selection is  
13 all about.

14 And, folks, there is absolutely nothing  
15 wrong with any of you, if you can't follow some of the  
16 law or don't believe in the law that applies in this type  
17 of case, this is a free country, we have an absolute  
18 right to agree or disagree with our laws. We can  
19 disagree with our law as much as we want but we still  
20 have to be able to follow the law.

21 So, if some of you disagree with the law  
22 but if you can set aside your disagreement and follow the  
23 law you are qualified but if you have a disagreement with  
24 some aspect of our law is so strong that you may not be  
25 able to follow the law you may not be qualified and

1 that's why, the reasons the lawyers will have a chance  
2 to talk to you about the law involved so we can determine  
3 whether or not this is a case that you are qualified to  
4 sit on.

5 Now, in talking about presumption of  
6 innocence I want to go back like to the O.J. Simpson  
7 case; we have all had an opinion about O.J. is innocent  
8 or guilty, that opinion is based on what we have heard  
9 on the radio and TV and read in the newspaper. Even  
10 though we have read everything that may lead us to  
11 believe that he's guilty he is still entitled to the  
12 same presumption of innocence that anybody else is  
13 entitled to at any trial. And, you know, just because  
14 we have -- all have an opinion on O.J.'s case I don't  
15 know that any of us actually know what happened out  
16 there.

17 You know, we all -- we all think we have  
18 an opinion on O.J.'s case -- let me back up; we all do  
19 have an opinion and we all think that he did or didn't  
20 do it, whatever your mind-set is. But I don't think any  
21 of us actually could sit here and base a verdict in this  
22 case on what we have heard on the radio and television.  
23 We don't know whether it's the truth or not.

24 And we are going to do the same thing  
25 in this case that they are going to try to do in



1 California and that is to try to find 12 people,  
2 regardless of their ideas or opinions, who can give a  
3 fair trial to the person charged.

4 And I'm using the O.J. example just to  
5 let you know just because you may have heard something  
6 about a case doesn't disqualify you, just because you may  
7 know something about the parties involved you are not  
8 disqualified.

9 You only become disqualified if you have  
10 an opinion about the guilt or innocence of a person that  
11 is so strongly fixed in your mind that this opinion would  
12 influence your verdict.

13 So what I want are 12 of you that can  
14 keep an open mind and come into this case and tell me  
15 that you will base your verdict on the evidence and not  
16 on anything that you have heard about the people or the  
17 person charged or the people involved in this case,  
18 whether they be the lawyers, the Court, the Court  
19 Reporter, the witnesses, the victim or whomever. I want  
20 12 fair people and I know we are going to be able to find  
21 it.

22 Now, the State has what we call the  
23 "burden of proof."

24 The State must prove all of the elements  
25 of the offense beyond a reasonable doubt. The defendant

1 has absolutely no burden of proof, he doesn't have to  
2 testify, he doesn't have to present witnesses nor any  
3 evidence of any nature. He simply has to be here.

4 The burden of proof will rest on the  
5 State throughout this trial and will never shift to the  
6 defendant.

7 Now, if the defendant and his lawyers  
8 want to sit in the courtroom and work crossword puzzles  
9 during this trial, frankly I don't care. Mr. Wardlow has  
10 nothing to prove to you. He doesn't have to participate  
11 in this trial, his lawyers don't have to participate in  
12 this trial but they have to be present.

13 Now, your sitting out there probably  
14 wondering, what do you mean they don't have to  
15 participate?

16 Well, I mean since they are the ones  
17 that have been accused they don't have to do anything to  
18 help the State, the State has the burden, the State  
19 brought the charges, the State has to prove the charges.

20 If the State proves all of the elements  
21 of the offense then quite frankly it's going to be the  
22 jury's job to find the defendant guilty but if the State  
23 fails to prove all of the elements of the offense then  
24 Mr. Wardlow will stand at the end of the trial as he does  
25 today and that is not guilty.

1                   So when I am saying they don't have to  
2 participate I want you know that he certainly has the  
3 right to do so but the law requires the State to prove  
4 the charges and that's why I'm telling you that Mr.  
5 Wardlow and his lawyers have absolutely nothing to prove  
6 to you. They are just required to be here.

7                   Now, the indictment in this case will  
8 be read to the jury once the jury is selected, once that  
9 indictment is read the defendant will enter a plea of  
10 "not guilty" and the trial will begin.

11                  Let's back up for a moment and talk  
12 about an indictment; I'm sure there's a lot of you out  
13 there that have an idea that if a person has been  
14 indicted then they must be guilty.

15                  Have any of you served on a Grand Jury?

16                  All right. I see several hands of  
17 people that have served on a Grand Jury so several of you  
18 will know what I'm talking about. But a Grand Jury is  
19 not a jury that decides the guilt or innocence of a  
20 person charged with a criminal offense. A Grand Jury is  
21 a body of people who are empaneled to take a look at  
22 alleged cases and decide whether there is enough to have  
23 a trial.

24                  But I don't know how your Grand Jury  
25 works in this county, most of my work is in Dallas and

1 in Dallas you may have a Grand Jury look at one case in  
2 a month or they may look at 200 cases in a day.

3 The proceedings in a Grand Jury are  
4 secret, meaning that the public has no access to the  
5 Grand Jury and the lawyers don't even have access to what  
6 goes on in a Grand Jury until someone who testified in  
7 the Grand Jury testifies in trial.

8 You may have a police report read to the  
9 Grand Jury and that is all. That police report may be  
10 based upon information gathered by various police agency  
11 or it may be just based upon what somebody in the  
12 neighborhood said. We never know exactly what is said  
13 or told to the Grand Jury during the investigation so it  
14 certainly would be inappropriate for any of you selected  
15 for this jury to assume that simply because a person has  
16 been indicted that person is guilty.

17 The indictment in a criminal case is a  
18 document that lets the State know they have to prove, it  
19 lets the Defense know what they are charged with, if they  
20 want to prepare a defense they can do it but the  
21 indictment is no evidence.

22 If any of you have been involved in a  
23 divorce or civil lawsuit you know that the proceeding was  
24 started with a filing of a petition, a petition that  
25 alleges why you should have a divorce or why you should

1 be awarded money or why you should be ordered to pay  
2 money in a civil lawsuit and all an indictment is, it's  
3 a pleading, it's a pleading in a criminal case, lets  
4 everybody know what the charges are and after it's read  
5 to the jury the jury should just basically forget it  
6 because it is not evidence.

7 If the State stood up and read to you  
8 the indictment and sits down they wouldn't have presented  
9 anything for your consideration.

10 So I want to stress on each of you that  
11 just because a person has been indicted is absolutely no  
12 evidence that they are guilty.

13 I want 12 people who can think for  
14 themselves, I don't want 12 people on the jury that says,  
15 "Well, I have read in the newspaper that Mr. Wardlow is  
16 guilty so I think I will go along with the paper."

17 I don't want people on the jury that  
18 say, "Mr. Wardlow has been indicted so maybe that Grand  
19 Jury heard something I didn't hear so I think he must be  
20 guilty."

21 I want people that have their own minds  
22 and independence and will look at the evidence and decide  
23 for themselves the guilt or innocence of Mr. Wardlow and  
24 if you can tell me that you can do that I think you will  
25 be an excellent juror in this or any other case.

1                   Now, I told you that the defendant does  
2 not have to testify or participate but I want you to know  
3 that he certainly has a right to participate in the  
4 trial. He can testify if he wishes to do so and he can  
5 call witnesses to testify if he wishes to do so, that he  
6 certainly always has a right to cross examine any  
7 witnesses put on by the State.

8                   If the defendant does choose to testify  
9 then you are going to judge his testimony and credible  
10 testimony the same as you will the testimony and  
11 credibility of other witnesses that testified. If Mr.  
12 Wardlow chooses not to testify then you will then, you  
13 are going to base your verdict on the other witnesses  
14 that you heard from and you certainly cannot speculate  
15 about why Mr. Wardlow didn't testify if he doesn't.

16                   Speculation is not the basis of your  
17 verdict, evidence, that's what you base your verdict on  
18 so if a person testifies judges that testimony and that  
19 credibility but if a person doesn't testify in his or her  
20 trial then you don't have anything to judge or way  
21 concerning that person's credibility and what you need  
22 to do is to be able to just put it out of your mind and  
23 weigh the facts that you have heard.

24                   We certainly in this country don't want  
25 people being convicted on speculation or guesswork so,

1 folks, you can't speculate.

2 If the defendant doesn't testify there  
3 may be many reasons a person chooses not to testify. You  
4 may have a person that -- now, let me back up for a  
5 moment, I am mentioning the attorneys and Mr. Wardlow  
6 from time to time but when we are going through jury  
7 selection we are not permitted to discuss the facts of  
8 the case so when I am discussing various examples to try  
9 to illustrate a point I don't want any of you to assume  
10 that I'm using an example that will apply to this trial.  
11 I'm talking about trials in general when I'm going over  
12 principles of law.

13 Now, there may be many reasons a person  
14 chooses not to testify. A person may be borderline  
15 retarded, maybe a person has a speech impediment, maybe  
16 a person is just so shy if he or she testifies or gets  
17 up to talk in front of a group of people they freeze up.  
18 Maybe a person is just not as bright as some of the  
19 lawyers that are going to be asking the questions. You  
20 may get somebody on the witness stand that is not as  
21 educated as a lawyer and before the testimony is over the  
22 lawyers may have that witness saying, "Black is white and  
23 white is black."

24 Folks, there are hundreds of reasons why  
25 a person may choose not to testify so that's why we are

1 not to speculate about a person's right not to testify,  
2 if they do fail to testify, frankly, they have nothing  
3 to prove then there's no reason to testify.

4 So I do want each of you to realize if  
5 you are chosen you can't guess or speculate about  
6 anything, you base your verdict on what you hear.

7 And I'm sure there are several of you  
8 out there that are saying to yourself, "Judge, wait a  
9 minute, if I'm charged with a crime and I'm not guilty  
10 I am going to get up and tell the world I am not guilty."

11 Well, folks, if Mr. Wardlow is charged  
12 with an offense and when that indictment is read to the  
13 jury he's going to plead "not guilty" and he's telling  
14 the world at that point that he's not guilty.

15 After that the State will put on all the  
16 evidence that they have or want to put on and if Mr.  
17 Wardlow wants to participate and put on evidence he can  
18 but he doesn't have to. No one has to incriminate  
19 himself or give evidence against himself.

20 And for us to keep our system going the  
21 way it is and have what I consider to be one of the best  
22 legal systems in the world we are all going to have to  
23 be able to go through some mental gymnastics and those  
24 gymnastics include putting aside what we think we may  
25 know about a case, putting aside guessing, basing our



1 decision on what we hear and what we understand, not what  
2 we guess.

3 And there's nothing wrong if you can't  
4 do it. We have 200 people, we only need 12 of you but  
5 we have 200 because there's going to be some of you out  
6 there that just frankly can't sit on a case if a person  
7 doesn't testify. There's going to be some people out  
8 there tell me they believe anyone indicted is probably  
9 guilty.

10 I want honesty from you and I believe  
11 you will be honest and we'll make this process as short  
12 as we can but when we talk to you individually there may  
13 be those that cannot follow the basic principles of law  
14 that I have discussed.

15 Is there anybody that just doesn't  
16 believe in our system?

17 In other words, is there anybody that  
18 does not believe in the presumption of innocence or  
19 somebody that doesn't believe that the State should be  
20 the one that proves all the cases?

21 I see no hands so I take it that each  
22 of you can follow the basic principles of law.

23 In Texas when the trial begins it  
24 basically takes part in three phases, the first part of  
25 the trial is the voir dire, the jury selection process,

1 that's what we are beginning now.

2 Once the jury is selected we start what  
3 we call the "guilt or innocence phase of the trial", the  
4 State will put on their evidence then they will rest, the  
5 Defense, if they want to put on any evidence they put on  
6 their evidence then they rest, both sides close, we  
7 prepare what is called a "Court's Charge", the Charge  
8 will contain all of the law that will apply when you are  
9 reviewing the evidence.

10 The Charge will also list all of the  
11 elements of the offense that must be proved before a  
12 person can be found guilty.

13 After the Charge is read to the jury  
14 each side will be permitted a certain length of time to  
15 present their arguments or summation of the evidence then  
16 the jury is retired to deliberate.

17 If you come back with a not guilty the  
18 trial is over and we go home, if you come back with a  
19 verdict of guilty then we enter into the punishment stage  
20 of the trial.

21 And the punishment stage of the trial  
22 sometimes -- well, in a punishment stage sometimes you  
23 will hear evidence that maybe is not admissable in the  
24 first part of the trial.

25 Now, the first part of the trial I guess

1 we could say is basically there to find out if something  
2 happened and if so whether or not the defendant is  
3 responsible.

4 If you find that the defendant is  
5 responsible and is guilty then the second part of the  
6 trial is to find out something about the person you have  
7 convicted so that you can set the appropriate punishment.

8 So the first part of the trial after  
9 jury selection, "Did he or did he not do it?"

10 Second part, "What kind of punishment  
11 is appropriate?"

12 Now, what I've talked about so far  
13 applies to all criminal cases including murder cases but  
14 a capital murder case is a little bit different. The  
15 jury selection process takes longer in a capital case  
16 because each side as I said earlier today has a right to  
17 talk to the jurors individually about their ability to  
18 follow the law.

19 Then once the jury is selected the first  
20 part of the trial is the same as any other trial, the  
21 State puts on their witnesses, the Defense puts on their  
22 witnesses if they wish then you decide guilt or  
23 innocence.

24 If you find a person guilty of capital  
25 murder and the difference comes in the punishment stage

1 of a trial because in the punishment stage of a murder  
2 trial there's only one or two punishments, it's either  
3 life in the penitentiary or death by lethal injection.

4 But before I talk about what capital  
5 murder is I want to go into a little bit of what murder  
6 is.

7 We are going to hand out questionnaires,  
8 in that questionnaire you are going to -- well, you are  
9 going to have about 11 pages to fill out and on the first  
10 page you are going to have a place that you can circle  
11 how you feel about the death penalty and whether you  
12 think it's appropriate or not.

13 The first question will ask whether you  
14 believe the death penalty is appropriate in all murder  
15 cases, if you do you circle Number 1, the next question,  
16 Number 2, is a statement that you believe that the death  
17 penalty is appropriate in some murder cases and you could  
18 return a verdict which assessed the death penalty. If  
19 you -- if that's the way you feel then circle Number 2  
20 and Number 3 says "I don't believe in the death penalty  
21 but if the law provides for it I could assess it", that's  
22 your feeling, that's three, right on down the line, you  
23 have six different answers that will help these lawyers  
24 kind of focus on whether they need to talk to you and  
25 what they need to talk to you about.

1 But, you know, before you can fill out  
2 this questionnaire you need to know a little bit more  
3 about what murder is.

4 Murder is a homicide but not all  
5 homicides are murders so let's just classify a homicide  
6 as "unnatural death", homicide could result from a car  
7 accident or from a gunshot, we have justifiable homicide  
8 and we have non-justifiable homicide.

9 Our statute defines murder which is a  
10 homicide basically is the intentional taking of another  
11 person's life without legal justification or excuse. If  
12 there's a legal justification or legal excuse then it  
13 would not be murder.

14 If I were to go outside say in a park  
15 somewhere and discharge a firearm, shoot it straight up  
16 in the air and the bullet came down and killed somebody  
17 that would be a homicide but it wouldn't necessarily be  
18 murder. I may not have intended to kill, I may very well  
19 be charged with negligent homicide.

20 Maybe I am charged with some other  
21 offense but I'm not guilty of murder because I had no  
22 intention to kill at that point. Remember, murder is the  
23 intentional taking of another's life without legal  
24 justification or excuse.

25 Maybe I was drunk when I fired the gun

1 up in the air and it's absolutely no excuse at all, that  
2 may very well show a callous disregard for the rights of  
3 other people but in this example it's not murder because  
4 there was no intention to kill.

5 There's another classic example, you  
6 might come home and find your spouse in bed with someone  
7 else, you might become so enraged you take a gun and  
8 shoot one or both of them.

9 You have committed a homicide, maybe  
10 it's murder, maybe it's not murder, that's what the jury  
11 is to decide. If a person acted on sudden passion and  
12 this passion basically overcame your reason you may very  
13 well be guilty of manslaughter but not murder but if you  
14 know what you are doing and you wanted to kill those  
15 people and you are calm and cool about it that's murder,  
16 that's why we have juries look at the facts, take the  
17 facts of each case, look at the events and decide what  
18 events, if any was committed.

19 Maybe you see someone molesting a child  
20 and you try to stop that person without using a weapon  
21 and that person starts to overpower you and you have to  
22 use a weapon to defend yourself and the child being  
23 abused. That is not murder, that's self-defense and  
24 defense of the third person.

25 You would absolutely be guilty of no

1 offense, that would be a not guilty case based on those  
2 facts.

3 Murder is the intentional taking of  
4 another person's life without legal justification and  
5 excuse, "I want to kill and I do it", that's murder.

6 Now, I'm going into this because I'm  
7 going to have a lot of people fill out their  
8 questionnaire and sometimes if I don't get into what  
9 murder is and isn't I will have a lot of people tell me  
10 that they believe the death penalty is appropriate unless  
11 maybe a person is killed out of self defense and then  
12 maybe life in prison would be appropriate.

13 See, if you kill out of self defense  
14 there's no offense committed, if you kill by defending  
15 another person there is no offense committed so when you  
16 are filling out that questionnaire and the question asks  
17 you to explain your feelings on the death penalty and we  
18 ask what is your feeling on the death penalty I want you  
19 to keep in mind what murder is and isn't because if  
20 there's a legal justification or excuse there's no  
21 offense committed and there's no punishment for that  
22 offense.

23 Now, I haven't told you what capital  
24 murder is. You know that murder is the intentional  
25 taking of a life without legal justification or excuse.

1                   Before I get to capital murder I want  
2 to also talk about the punishment range for murder; you  
3 probably wonder why we are going to do that if this is  
4 a capital murder case.

5                   We are going to do it because a capital  
6 murder case could very well result in a finding of  
7 murder, not capital murder, I will explain how that could  
8 happen in a few minutes; if a person is found guilty of  
9 murder in this state then the punishment would be a  
10 minimum of five years to a maximum of 99 years or life  
11 in the Texas Department of Criminal Justice. There can  
12 also be a fine assessed.

13                  Also in Texas if a person is eligible  
14 for probation the jury could consider probation for  
15 murder.

16                  In this state if a sentence assessed is  
17 10 years or less then the jury must also decide whether  
18 or not that sentence will be probated or served in the  
19 penitentiary.

20                  If you set a sentence of more than 10  
21 years, 11, 12 or up then probation is not an option so  
22 you would never consider probation but if you are on a  
23 jury and find a person guilty and determine that the  
24 appropriate sentence would be 10, nine, eight, seven, six  
25 or five years and you also have to decide whether or not



1       probation should be granted.

2               And I'm sure there are lots of you that  
3       are sitting out there saying, "Well, Judge, you are  
4       sitting here telling me that I'm here for a capital  
5       murder and now you are talking to me about murder for  
6       probation."

7               Folks, we have a wide range of  
8       punishment, in our law we have a wide range of punishment  
9       provided by law because we have a wide range of offenses  
10      and the way an offense occurs.

11              If a person is eligible for probation  
12      in this state that means they must not have ever  
13      committed a felony offense or be on probation. If a  
14      person is eligible for probation and you are a juror and  
15      you are called upon to assess the punishment it may very  
16      well be something that you have to look at.

17              If you as a jury decide that you want  
18      the person probated the Judge has no choice, the Judge  
19      will put the person on probation for whatever period of  
20      time the Judge decides is appropriate up to a maximum of  
21      10 years.

22              Now, on probation a person has many  
23      obligations, in addition to obligations that we have as  
24      citizens the obligations and responsibilities of a person  
25      on probation are set by the Judge, the jury does not

1 determine what those conditions are, the court does.

2 The jury decides guilt or innocence and  
3 decides either prison or probation but the Judge  
4 determines the probation condition.

5 Conditions of probation could include  
6 the fact this person has to work and support his or her  
7 dependents, has to remain in a specified area such as  
8 Titus County, if a person lives in another county then  
9 we can restrict that person to living in that county.  
10 We can include in the probation conditions random  
11 urinalysis for drug use. The Probation Department would  
12 have a right to visit the probationer at his or her work  
13 address and home address.

14 One thing I try to impress upon anyone  
15 that I put on probation is that basically he have been  
16 found guilty of a crime, they deserve a prison sentence  
17 and instead of spending that time in prison they can stay  
18 on the street as long as they do what they are ordered  
19 by the Judge.

20 If a person violates his or her  
21 probation then he or she can be arrested, brought back  
22 to court and without a jury trial and a determination can  
23 be made by the Court as to whether or not probation was  
24 violated. If so the Judge can revoke the probation.

25 You may be on probation for 10 years,

1 it may be the last day of your probation and you may go  
2 in for urinalysis and they find out that you have been  
3 using marijuana or cocaine, you can get your probation  
4 revoked and it can be revoked for 10 years, you can be  
5 on probation for 10 years, you mess up on the last day  
6 of probation and you are gone for 10 years.

7 Probation is not necessarily a cakewalk.  
8 I know a lot of people get a bad taste in their mouth  
9 when they think about probation but there's so many  
10 different ways that offenses can be committed, there's  
11 so many different ways and conditions and the jury has  
12 discretion and that's why I want you to think about  
13 probation because I want you when you come back and talk  
14 to us individually you are going to be asked whether or  
15 not you can keep an open mind to probation in a murder  
16 case and you are going to be asked whether or not you can  
17 keep an open mind to life in prison or the death penalty  
18 and if you cut off either end of the spectrum in a  
19 capital case then you are not qualified.

20 If you can keep an open mind and tell  
21 me and these lawyers that you haven't excluded the high  
22 or low side and that you will base your verdict on the  
23 evidence then we want you on the jury.

24 Now, you heard me say earlier that in  
25 order for a jury to convict someone of murder you must

1 be convinced that this person took the life of another  
2 without legal justification or excuse but you did not  
3 hear me talk about motive. There's no requirement that  
4 the State prove why the killing occurred.

5 And if you think about it actually it  
6 doesn't matter why it occurred. If I kill somebody and  
7 I don't have a legal excuse then I'm guilty of murder.

8 Why you did it is immaterial to the  
9 issue of guilt but the motivation may be important to you  
10 when you set punishment so in the first part of the trial  
11 the reason a person commits the offense is unimportant,  
12 "Did he or did he not do it, yes, or no?"

13 But in the second part of the trial you  
14 are going to look at the motivation, look at all the  
15 circumstances surrounding the offense and you determine  
16 the appropriate punishment.

17 The motivation could be greed, it could  
18 be anger, the motivation may be fear, the motivation may  
19 be mercy, it may be out of love, it may be out of pure  
20 meanness. There are many reasons a person may kill.

21 Now, the reason he does it if it's not  
22 a legal reason like self defense, again is immaterial to  
23 guilt but that's why we have a two stage trial when you  
24 try to find out something about the person and why he did  
25 something then you get a feel for that person and

1 determine whether or not this person is a continuing  
2 danger to society or whether this was an isolated event.

3 If you think the person that committed  
4 murder is really dangerous and did so out of meanness,  
5 for instance, if you think he's going to commit murder  
6 in the future you may want to put that person in prison  
7 for life.

8 But if you see that person acted out of  
9 something other than anger or meanness, maybe a person  
10 acted out of mercy, maybe a person acted out of love,  
11 whatever, if you do believe that this person acted with  
12 the motivation that would not apply to the rest of time  
13 -- in other words, if it were a mercy type killing you  
14 might think that a person would never ever be a threat  
15 to society and that it was an isolated instance and that  
16 maybe it's the kind of case you would want to probate.

17 You might look at a person and based on  
18 his or her age think that, well, what they did certainly  
19 was not right but I can't see this ever happening again  
20 because of peculiar circumstances of the way this  
21 happened and that might be a person that you would want  
22 to put on probation.

23 Again, all I'm asking each of you to do  
24 is to try to keep an open mind and if you can keep an  
25 open mind I want you on the jury, okay, and if not we

1 will have to excuse you and put you on another one.

2 Now, if you could never truthfully  
3 consider probation for anyone convicted of murder I want  
4 to know about it and so do these lawyers.

5 And like I said earlier, we are not  
6 going to take issue with that, you have an absolute right  
7 to your feelings and no one is going to disagree with  
8 you. You are going to have or we are going to have a lot  
9 of you out there that are going to tell me you can't give  
10 probation and I'm going to have a lot of you tell me that  
11 you can't give life and I can't stress it more than I  
12 have. Just be honest and tell us how you feel.

13 When I'm talking about considering  
14 probation, that you have to sit here before a trial  
15 starts and tell me, "Yes, Judge, I will give probation  
16 if a person is found guilty of this offense", I'm not  
17 saying that at all. I'm saying I want you to be able to  
18 keep your mind open and consider it if appropriate, give  
19 it -- it's not -- don't "give it" but when I talk about  
20 "considering" I mean more than just give it a fleeting  
21 thought.

22 It's kind of like if you are going to  
23 buy a new car, maybe you would like to have a Rolls  
24 Royce, maybe you would consider buying it but if you  
25 don't make enough money to buy it there's no way that you

1 can buy a Rolls Royce, you considered buying it, you  
2 realized you can't and move on and buy something else.  
3 That's not the type of "consideration" that I'm talking  
4 about in "giving consideration in a murder case."

5 I'm talking about you have to be able,  
6 actually able to have an open mind and not only consider  
7 probation but give it in the appropriate case.

8 And it may be one case out of a thousand  
9 and if your mind is close to ever giving probation, fine,  
10 but if your mind is open, that it's a possibility, let  
11 us know.

12 Okay. We talked about murder, what is  
13 capital murder?

14 Capital murder is murder plus.

15 I told you that murder is the  
16 intentional taking of another's life without legal  
17 justification or excuse.

18 Capital murder is a murder which occurs  
19 during the commission of another felony. If a person is  
20 burglarizing someone's home and during the burglary he  
21 kills somebody then he may be guilty of capital murder.  
22 If a person commits a murder during a robbery or during  
23 an arson then he's guilty or may be guilty of capital  
24 murder, if a person kills two or more people in a  
25 criminal episode or transaction that would be capital

1 murder, like the O.J. Simpson case, two people were  
2 killed, that in Texas would be capital murder.

3 I don't know about California law, I  
4 don't care about California law but the killing of people  
5 in one transaction would be a capital murder, killing of  
6 a policeman or fireman while on duty would be capital  
7 murder, if you hire someone to kill another person that  
8 is capital murder.

9 So capital murder is murder plus, it's  
10 basically a murder that occurs during the commission of  
11 another offense.

12 In this particular case the indictment  
13 alleges that "On or about June 14th, 1993 the Defendant  
14 did intentionally and knowingly cause the death of a  
15 person by the name of Carl Cole by intentionally shooting  
16 him in the head with a firearm."

17 The indictment further alleges that the  
18 offense occurred during the commission or attempted  
19 commission of robbery.

20 So what do we have in the indictment?

21 We have two allegations; we have an  
22 allegation that the Defendant killed somebody and we have  
23 an allegation that he killed somebody during a robbery.

24 In order for a person to be guilty of  
25 capital murder under these circumstances you as the jury



1 would have to find that the murder was done intentionally  
2 and that it was done during the commission of a robbery.  
3 You might very well find out that a person committed a  
4 murder but maybe it was not in a robbery -- and I'm not  
5 talking about this case again, folks, I read you the  
6 indictment and that's as close as I'm going to get to the  
7 facts of this case.

8 Frankly, I don't know much more about  
9 the case than I just told you. I am sure some of you out  
10 there have heard or read more about it than I know so  
11 again we are getting away from specific instances  
12 involving this case.

13 So if a person is involved or charged  
14 with a capital murder during a robbery the State must  
15 prove the intentional taking of a life and they must  
16 prove that it was done during that robbery.

17 If the State doesn't prove that it  
18 occurred during a robbery, you may believe that a murder  
19 occurred but it wouldn't be capital murder without that  
20 robbery element so then what would you do?

21 You would find the person guilty of  
22 murder then you would have to set that punishment between  
23 five or 99 years or life in the penitentiary or you may  
24 find that murder did not occur but a robbery occurred  
25 then you would find the person guilty of robbery and set

1 the appropriate punishment.

2 To be capital murder both had to occur,  
3 the murder during the commission or attempted commission  
4 of another offense.

5 Now, if a person is found guilty of  
6 capital murder then in the punishment stage of the trial  
7 the jury will answer certain questions, you don't go back  
8 there and just say, "Well, we think it's life or we think  
9 it's death", you answer some questions and based upon the  
10 answers to those questions the end result will either be  
11 a life sentence or a death sentence.

12 Once you find a person guilty of capital  
13 murder in essence the law says that the appropriate  
14 sentence is life.

15 Conviction of capital murder will  
16 automatically get a life sentence for the defendant  
17 period.

18 But our law also says that if the State  
19 believes that death is appropriate then they may ask the  
20 jury for death and they do this by asking the jury to  
21 answer certain questions.

22 Since the law presumes that life is the  
23 appropriate sentence upon conviction of capital murder  
24 and the State has the burden of proving the appropriate  
25 answer to questions that will be submitted to you as a

1 jury.

2 I can't tell you exactly what the  
3 questions are because it's going to depend on the facts  
4 of this case. There will either be two or three  
5 questions, one question will ask about the future  
6 dangerousness of the defendant, it will ask whether or  
7 not you believe that the defendant will be a danger in  
8 the future. If you believe based on the evidence that  
9 he will then you will answer that question, "Yes."

10 The second question, it may or may not  
11 be presented to you, depending on the facts, inquires as  
12 to the defendant's involvement in this particular  
13 offense, did he do the actual killing, if he didn't did  
14 he intend that a death occur?

15 You answer that question. If you answer  
16 the first question "Yes" that he's going to be a danger  
17 in the future and you answer the question "Yes" that he  
18 either did the killing or intended that death occur you  
19 have got a death penalty, two "Yeses" equate to "death."

20 But there's a third question and that  
21 is a question we kind of give to jurors as an out, you  
22 are going to be under oath to render your verdict based  
23 on the law and the evidence and the evidence and the law  
24 and they tell you that, yes, this person is going to be  
25 a danger in the future and, yes, this person intended to

1 kill but there may be something in your heart that tells  
2 you that death is not appropriate for this person because  
3 of some mitigating circumstances.

4 Now, "mitigating" is not an excuse,  
5 mitigation is something that may lessen the  
6 blameworthiness or lessen the -- not "lessen the guilt"  
7 but lessen the -- well, blameworthiness of the person,  
8 the culpability of the person.

9 If you believe that a person is a danger  
10 and they intended to kill but you don't believe that  
11 death is appropriate you have got a problem as a juror  
12 because if you answer those two questions appropriate,  
13 you know, death occurs, that's what the third question  
14 is for, the third question is asking you basically, okay,  
15 folks, you have decided that death is appropriate based  
16 on the answer to the questions, do you believe based on  
17 all of the facts of the case including all of the  
18 mitigating circumstances that the defendant should be  
19 spared?

20 So it's an out. If you say "Yes it  
21 should be" then it's life, if you say "No" then the two  
22 questions that you have previously answered will dictate  
23 that there is a death sentence.

24 Now, also another thing in a capital  
25 murder case, a lot of people have told me in capital

1 murder cases if a person is guilty of capital murder they  
2 are always going to be a danger in the future.

3 And there's nothing wrong with you  
4 believing that but I think you can see if that's your  
5 attitude there's absolutely no reason for that first  
6 question, the first question, is he going to be a danger  
7 in the future, the first question asks the State to prove  
8 it beyond a reasonable doubt so if there's any of you out  
9 there that say in every case where I found a person  
10 guilty of murder I'm going to find that person is going  
11 to be a danger then again, folks, you probably are not  
12 qualified because you are required as jurors to sit back  
13 and reexamine the evidence when you assess punishment.

14 Now, the punishment for a person guilty  
15 of capital murder you know is going to be automatically  
16 life, the State has to prove to you the other elements  
17 before it ends up in a death sentence, so you stand back,  
18 you reexamine, you look at the evidence and you look at  
19 those questions. You don't say automatically, you don't  
20 say, "Yes" because that's what you wanted, you don't  
21 decide that you want death and answer the questions  
22 appropriately, you answer the questions based on the  
23 evidence and let the laws dictate what the end results  
24 are.

25 Okay. I know it's been a long morning,

1 I'm pretty well finished.

2 One other thing I do want to go into;  
3 if you have an opinion about this case, as I said earlier  
4 you have to set this opinion aside. If you have any bias  
5 or prejudice concerning this case or the law in general  
6 you have to set it aside. If you can't we don't want  
7 you, if you can we want everyone.

8 I want you to fill out those  
9 questionnaires, I want you to turn them back in.

10 Once they are filled out and turned in  
11 you are free to go, we will bring you back individually  
12 and once we get 12 jurors and an alternate we are going  
13 to quit bringing you in.

14 So the ones in the first row and on back  
15 are the ones we are going to be talking to and the ones  
16 out in the hallway or second group we may or may not get  
17 to them.

18 We will not start the individual  
19 questioning until next Tuesday.

20 We will make copies of the  
21 questionnaires this afternoon, the lawyers can look at  
22 them over the weekend and we will give you calls starting  
23 Monday morning and probably six or five of you will be  
24 here Tuesday then we will start bringing in six to 10  
25 Wednesday and Thursday.

1                   We will be working on jury selection  
2 Monday, after next week Monday through Thursday bringing  
3 in six to 10 a day until we get our jury. We will bring  
4 in three in the morning, three in the afternoon.

5                   If you are the first person we bring in  
6 the morning you will be the first we talk to and you will  
7 be out of here as quick as we can get you out and as I  
8 said we may talk to you five minutes or we may talk a  
9 couple of hours and so we bring you in we appreciate you  
10 taking time with us but the next time we see you we will  
11 tell you whether you are or not on the jury. If you  
12 don't hear from us there may be something -- if you don't  
13 hear there may be something on the questionnaire that may  
14 influence you and we are not going to call, we are not  
15 going to notify each one of you if you are excused. You  
16 can call the District Clerk. We are just going to notify  
17 you if you are going to be here and we want to talk to  
18 you but quite frankly a lot of you we won't talk to you  
19 and that's why we have those questionnaires. I know a  
20 lot of you are not going to like filling out that  
21 questionnaire, I don't blame you, I wouldn't want to fill  
22 it out. If you want to be mad at somebody be mad at me,  
23 the law says those questions are admissable in this type  
24 of case. If you don't like the questionnaire I can't do  
25 anything about changing it, tell your Legislature, tell

1       them you don't like it, tell them to change the law and  
2       I will be behind you a hundred percent. But until that  
3       time you have to fill them out and turn back the original  
4       which will be kept by the Court, the lawyers will have  
5       a copy and once they use them they will turn it back in  
6       so that your address and phone number will not be made  
7       available, so that's the questionnaire, but they will be  
8       -- I will have a copy or the original and the lawyers  
9       will have a copy.

10                   Is there anybody that has a question?

11                   Yes, sir.

12                   THE POTENTIAL JUROR: I'm  
13       supposed to go out of town in a few days, am I supposed  
14       to just wait?

15                   THE COURT: No. There's a  
16       place in the questionnaire, if you tell us you want to  
17       be out of town we'll work around your schedule. If we  
18       call you and want you here on Wednesday and you say you  
19       are supposed to be some place Wednesday we will schedule  
20       you for Thursday, we are going to work with you as much  
21       as we can but when we start calling individuals please  
22       work your schedules out the best that you can.

23                   THE POTENTIAL JUROR: So we  
24       fill out the questionnaire that you are going to give us  
25       as we leave?



1 THE COURT: Yes, sir.

2 THE POTENTIAL JUROR: This  
3 afternoon?

4 THE COURT: Yes, sir.

5 THE POTENTIAL JUROR: Get it  
6 from one of the deputies then we go back to our office?

7 THE COURT: Yes.

8 THE POTENTIAL JUROR: Then you  
9 call us Monday?

10 THE COURT: We'll start  
11 Monday, it may be four weeks before you hear from us.

12 We'll just start calling people down the  
13 line and bring you in as soon as we get to you.

14 Anyone else?

15 Okay. Mr. Townsend, do you have any  
16 comments or anything that you wish for me to point out  
17 to the jurors that I haven't?

18 MR. TOWNSEND: Nothing.

19 THE COURT: Mr. Old, do you  
20 have anything?

21 MR. OLD: Nothing at this  
22 time.

23 THE COURT: Then I will excuse  
24 all of you to the hallway and we will bring in our next  
25 group.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Thank you for your patience.

(Recess.)

(Second group seated.)

THE COURT: All right.

Everybody will take your seats again, like I told the other group, I want to thank you for your patience. It may be a long afternoon for all of us.

Now, all of you know that you are down here as a juror or prospective juror in a capital murder case.

Our laws provide in a capital murder case that the lawyers have the right to question you individually and the law also provides certain other procedures and that's why we are doing it this way so I apologize for the inconvenience. And if you want to be mad at somebody I think you can be mad at me, since I don't live here I can talk openly.

I will introduce the parties involved, I am Gary Stephens, I am a Visiting Judge, I live in Ellis County and most of my work is in Dallas, I have been assigned to this case to come down here and select a jury and hear the evidence and to try the case.

1 Now, in order to do that, of course, we  
2 need 12 of you citizens as our juror.

3 The case is not out of Titus County, it,  
4 the alleged offense occurred in Morris County in the town  
5 of Cason.

6 Excuse me just a minute.

7 I had a little housekeeping matter there  
8 we had to attend to.

9 As I said, the case allegedly occurred  
10 in Morris County in the town of Cason.

11 The Morris County District Attorney will  
12 be representing the State and that's Mr. Richard  
13 Townsend.

14 Mr. Townsend.

15 He will be assisted by Mr. Randy Lee who  
16 I understand has recently been elected the District  
17 Attorney in Cass County and is now an Assistant District  
18 Attorney. I have appointed him to assist Mr. Townsend  
19 in this case.

20 The Defendant is represented, we have  
21 two Defense Attorneys, we have Mr. Bird Old, III and Mr.  
22 Lance Hinson.

23 The Defendant is seated between them,  
24 his name is "Billy Joe Wardlow."

25 You may be seated, sir.

1                   Now, I am introducing everybody because  
2 each of you have a right to know who the Defendant is and  
3 who the parties are.

4                   As you already noticed in the  
5 questionnaire there's a place for you to tell us if you  
6 know any of the people involved in this case. Knowing  
7 the people involved, whether it be the District Attorney,  
8 the Defense Attorney, the Defendant or the alleged victim  
9 does not disqualify you.

10                  If your knowledge of those people will  
11 be such that it influences your decision you may be  
12 disqualified but knowledge in and of itself does not  
13 disqualify you, that's why each side will talk to you  
14 individually to find out the extent of your knowledge,  
15 if any, and to find out your views and opinions on our  
16 law.

17                  Now, what I want to do today is go over  
18 some of the general principles of law that will apply in  
19 all trials. I want to talk to you about murder and  
20 capital murder, they are issues, frankly, that you need  
21 to be thinking about and when the lawyers bring you back  
22 and talk to you individually you are going to be asked  
23 a lot of questions and what I'm doing today is just kind  
24 of giving you an overview of what is about to come so you  
25 can be prepared when that questioning begins.

1                   The first and most basic principle of  
2 law is the presumption of innocence.

3                   Simply because a person may have been  
4 arrested for a crime is simply no evidence that the  
5 person is guilty, the fact that a person is about to  
6 stand trial is not evidence. You as a jury will decide  
7 the evidence based on what you hear from the witnesses  
8 that testify and you certainly do not decide the facts  
9 based upon speculation or based upon what you read in the  
10 newspaper or heard from your friends or family.

11                  I know that a lot of you have probably  
12 heard or read about this case and that's fine. But if  
13 you have heard or read about this case and what you have  
14 heard or read has formed an opinion in your mind then you  
15 may not be qualified and that's why we want to talk to  
16 you individually to find out what, if any opinion that  
17 you have already reached in this case because, you know,  
18 all of us are entitled to have a jury of our peers that  
19 can follow the law and will be able to indulge in this  
20 presumption of innocence.

21                  And the presumption of innocence, folks,  
22 to me and the lawyers is a lot more than just words. The  
23 presumption of innocence is the basic cornerstone of the  
24 legal system, it's a very important foundation, we have  
25 an excellent country but I tell you there are not many

1 places in the world that have the freedoms that we have  
2 and part of those freedoms are based on laws and you are  
3 the people that are going to enforce those laws and those  
4 rights and freedoms. And you do it by serving your  
5 country as a juror and I appreciate all of your service.  
6 But I also want you to know there is absolutely nothing  
7 wrong with you if you can't follow some of these  
8 principles of law.

9 Just like we have a great country based  
10 on these laws part of what is great is that we have a  
11 right to disagree with the laws so when I talk about the  
12 laws I want you to start thinking about them and if you  
13 can agree with them and go along with them, fine, and if  
14 you can't that's also fine.

15 All we want from you is honesty, we want  
16 you to tell us how you think, what you think and what you  
17 feel. Don't worry about what we think about, your  
18 thoughts and your opinions are your opinions and that's  
19 what counts, not ours.

20 Whether we agree or disagree with you  
21 is unimportant, we just need to know something about you  
22 and we want you to be honest with us without worrying  
23 about what we think of your opinions.

24 Now that this is behind us I want you  
25 to also know that not only is the Defendant presumed to

1 be not guilty, the State of Texas has what we call the  
2 "burden of proof", the State is the one that must prove  
3 all of the elements of the charge against the Defendant.

4 The State is the one that brings the  
5 charges, the State is the one that has to prove the  
6 charges that they have brought against a person in this  
7 or in any other case. The defendant has absolutely no  
8 burden of proof.

9 By that I mean he does not have to  
10 testify, he does not have to present witnesses, he only  
11 has to be here.

12 If Mr. Old or Mr. Hinson and Mr. Wardlow  
13 want to work a crossword puzzle during this trial I don't  
14 care as long as they don't disrupt the courtroom because  
15 they don't have anything to prove to you. The State  
16 brought the charges, they have to prove the charges, Mr.  
17 Wardlow doesn't have to disprove anything that is said.

18 He can certainly testify if he wants to,  
19 if he wants and present evidence but he has no obligation  
20 to do that. That falls right back on that presumption  
21 of innocence and falls right back to that burden of  
22 proof.

23 Mr. Wardlow is presumed to be not  
24 guilty. The State wants you to find otherwise, they have  
25 got to prove it to you and the Defense doesn't have to

1 help the State prove a thing so he doesn't have to take  
2 the stand.

3 Now, when the trial itself begins the  
4 indictment against the defendant will be read to you.  
5 When an indictment is read to you the defendant will  
6 plead not guilty and that means everything is in dispute.

7 After the plea of not guilty is entered  
8 the State will put on all the evidence they have and have  
9 you make that determination as to whether the person did  
10 or did not do what they are charged with and the State  
11 will rest.

12 If the Defense wishes to put on any  
13 evidence then they will put on their evidence but, as I  
14 said, they have no obligation to do so.

15 After both sides have presented  
16 everything to you they believe should be presented then  
17 the case is over as far as the testimony.

18 We will read the Charge to you, that is  
19 a legal document that will contain all of the law that  
20 you follow and sets forth all of the elements that the  
21 State must prove.

22 After this Charge is read to you both  
23 sides will be given a chance to present argument or  
24 summation of the evidence then you are retired to  
25 deliberate.



1                   If you come back with a verdict of not  
2 guilty the trial is over and we go home, if you come back  
3 with a verdict of guilty then we go into the next part  
4 of the trial which is the punishment part and often there  
5 is evidence admissable in the punishment stage of a trial  
6 that may not be admissable in the guilt or innocence, the  
7 first part of the trial.

8                   Our trial is broken down into two parts  
9 in Texas basically, it's because in the first part of the  
10 trial we don't really care about who the defendant is or  
11 anything about his history or past, we want to know what  
12 happened and if something did happen we want to know who  
13 was responsible and that's what the first part of the  
14 trial is for, "Did something happen, if so did this  
15 person do it?"

16                   Then in the second part of the trial,  
17 the punishment part, if you found the person guilty  
18 that's where you find out something about the person you  
19 have convicted so that you can determine what the  
20 appropriate punishment will be for that a person.

21                   So we have a two stage process or  
22 actually I guess you could say three stages, the first  
23 stage is picking the jury, the next stage is "What  
24 happened, if anything, and is the person responsible?"

25                   The last stage, "If he's responsible

1       what should we do about him?"

2                   Now, you have heard me talk about the  
3 fact that the Defndnat doesn't have to participate and  
4 you have heard me mention that the defendant has been  
5 indicted and is going to plead not guilty.

6                   I'm sure some of you out there are  
7 thinking to yourself, "Well, Judge, you are not telling  
8 me to presume Mr. Wardlow to be innocent, you are sitting  
9 there telling me that the State has to prove these  
10 charges but then you go ahead and tell me he has been  
11 indicted and you tell me that he may not even testify."

12                   And there's a lot of you out there that  
13 are going to be thinking to yourself, if a person is  
14 indicted, by gosh he must be guilty.

15                   A lot of you must be sitting out there  
16 thinking, "Judge, wait a minute. If he doesn't testify  
17 that probably means he's trying to hide something and if  
18 I'm not guilty of an offense I'm certainly going to get  
19 on that witness stand and tell the world I'm not guilty."

20                   Folks, maybe you would and maybe you  
21 wouldn't.

22                   Let's talk about an indictment. What  
23 is an indictment?

24                   It is nothing more than what we call a  
25 "charging instrument", it's a piece of paper that starts

1 a criminal process, if any.

2 If you have ever been involved in a  
3 divorce or civil lawsuit you know that the proceeding was  
4 started by the filing of a petition, if it's a divorce  
5 you or your spouse filed a petition stating the marriage  
6 should be terminated, if it's a civil lawsuit you filed  
7 a petition alleging why you should be paid money or  
8 someone filed a petition against you alleging why you  
9 should not pay them money. But whatever is in those  
10 petitions is not evidence, it's just what you say  
11 happened, it's what you say should happen but it is not  
12 evidence. It's just a pleading that starts a civil case  
13 and that's what the indictment is, it's a pleading, it  
14 tells the State what they must prove, it tells the  
15 Defndnat what he's charged with.

16 If the State knows what a person is  
17 charged with then the State will try to prove those  
18 charges and the defendant, if he wants to present any  
19 evidence will know what he's accused with or -- excuse  
20 me -- what he's accused of doing when he accused of doing  
21 it so he can present his evidence if he wishes to do so.

22 But the indictment itself is no  
23 evidence.

24 Is there anyone in this room that has  
25 been on a Grand Jury?

1 All right. We have got one person --  
2 a couple of people -- three. We had several in the other  
3 group.

4 Well, the people that have been on the  
5 Grand Jury will know a little bit more about this process  
6 than the rest of you but the Grand Jury proceedings are  
7 different from your normal jury trial. A Grand Jury does  
8 not determine guilt and innocence of the person charged.  
9 A Grand Jury hears evidence, maybe they don't even hear  
10 evidence from the person that is involved, the evidence  
11 they hear may result from just the reading of a letter  
12 from a police agency, maybe a Grand Jury will take three  
13 weeks and hear from hundreds of witnesses, maybe a Grand  
14 Jury will take five minutes and read a police report.

15 The proceedings in a Grand Jury are  
16 secret, meaning the public has no access. If a person  
17 does go to trial as the result of Grand Jury indictment  
18 that person certainly has the right to review any  
19 testimony before the Grand Jury if that testimony is used  
20 in trial but he doesn't have a right to know everything  
21 that happened in there.

22 Now, if the defendant doesn't have a  
23 right to know what happened in there the normal average  
24 citizen certainly has no idea what happened in there so  
25 we don't consider the indictment as any evidence.

1 But again, it's nothing more than a  
2 statement from the Grand Jury saying, "Look, Judge, you  
3 know, we think there is a little smoke here, why don't  
4 you get 12 people together and find out whether or not  
5 there was a fire?"

6 And that's what the 12 people are here  
7 for that very thing, maybe something happened, your job  
8 is to decide if it did and if it did who did it.

9 So each of you need to be able to assure  
10 me and the lawyers that the mere fact that a person has  
11 been indicted is not going to be prejudicial. In other  
12 words, you are not going to hold it against him and you  
13 are not going to use it to determine their guilt.

14 You know, you may get down and hear all  
15 the evidence in a case, you may be back in the jury room  
16 and you are thinking to yourself or you are talking among  
17 yourself, you know, I'm just not sure, I kind of think  
18 that he's guilty but I'm not sure but, you know, the  
19 Grand Jury indicted him so he must be guilty.

20 We don't want that, we don't want that,  
21 we want you 12 to make up your own minds and we don't  
22 want you to assume that somebody else knows more about  
23 the case than you do because when you go to trial you  
24 will hear everything that the law allows you to hear and  
25 if you don't hear it in the courtroom you are not allowed

1 to consider it.

2 I told you the defendant does not have  
3 to testify but he certainly has a right to do so. The  
4 defendant can subpoena witnesses just like the State, the  
5 Defense can present witnesses just as the State, the  
6 Defense can cross examine witnesses, the Defense also has  
7 a right for the defendant himself to testify if he wishes  
8 to do so but as I said earlier he doesn't have to.

9 Now, this gets into that area where I  
10 said a lot of you are going to say if you are not guilty  
11 you are going to stand up and shout it to the world.

12 We have lawyers, lawyers advise us when  
13 we are in the middle of a trial as to what we should or  
14 shouldn't do. You may have a trial where the lawyer  
15 thinks the State hasn't proved anything so he may not  
16 want to put his client on the stand, no reason for his  
17 client to take the stand or he might be shy, the Defense  
18 -- excuse me, decides he won't put him on, maybe the  
19 person charged is borderline retarded, he knows right  
20 from wrong, he's legally responsible if he did something  
21 but maybe he will get his words so mixed up he can't  
22 relate what happened to the jury so maybe in that  
23 instance it's better for a person not to testify. Maybe  
24 a person stutters, maybe he or she freezes up when he or  
25 she talks to a group of people.

1                   You may have people that are just not  
2 sharp enough to fence with a well educated lawyer.

3                   There are many reasons that persons may  
4 not testify.

5                   The bottom line is you as a juror will  
6 base your verdict on what you hear, not what you don't  
7 hear. You don't know what the Grand Jury heard so you  
8 are not going to base your verdict on that.

9                   The defendant, you are not going to know  
10 what the defendant would say if he doesn't testify so you  
11 don't speculate about it, you discharge that and put it  
12 out of your mind and base your verdict on what you heard.

13                   It certainly is inappropriate for any  
14 of you to be back in a jury room and say, "Well, you  
15 know, I'm just not sure. He may have done it and he  
16 didn't testify so I guess he did."

17                   That's speculation, folks, and that's  
18 wrong.

19                   If you are on trial you want the same  
20 thing that Mr. Wardlow wants and that's fair-minded  
21 people who will keep their minds open and base their  
22 verdict on the evidence that they hear.

23                   If you can do it I want you and if you  
24 can't I'm not going to take an exception to it, just tell  
25 me you can't do it and tell me why you can't and that's

1 fine.

2 I want to remind all of you you are  
3 under oath and you are were under oath when you filled  
4 out that questionnaire and when you answered these  
5 questions you were under oath.

6 Frankly I don't think that you would lie  
7 to get out of your jury service, if you were going to do  
8 that you probably wouldn't have appeared in the first  
9 place.

10 I do want to impress that it's very  
11 serious, this is the most serious undertaking that Mr.  
12 Wardlow will ever be involved in and he wants you to be  
13 fair with him and that's what all of us want from you.

14 Let me check on my notes here, I got a  
15 little bit off track.

16 Is there anybody out there that can't  
17 follow the basic principle of law that I have discussed  
18 so far, the fact that a person is entitled to be presumed  
19 not guilty, the fact that the State must prove the  
20 charges?

21 Is there anybody that can't follow that  
22 basic principle?

23 I take it that each of you can.

24 Now, what I have been talking to you  
25 about right now happens in all criminal trials, I have



1 just been talking in general, how a criminal trial  
2 progresses, how we select a jury and what happens once  
3 the jury is selected. The trials are all basically the  
4 same except for a capital murder case.

5 I told you that in a normal trial if a  
6 person is found guilty then the punishment part of the  
7 trial, you determine the appropriate punishment. That  
8 punishment depending on the offense could range from a  
9 few days in jail to life in prison, depending on what the  
10 offense is that the person is charged with.

11 The main difference between a capital  
12 murder case and another type of criminal case is that in  
13 a capital murder case there's only one or two  
14 punishments, that's either life imprisonment or death by  
15 lethal injection.

16 So in all cases other than capital cases  
17 the jury determines the punishment by setting the number  
18 of years that the person should serve in the penitentiary  
19 and then deciding whether or not probation is  
20 appropriate.

21 But in a capital murder case you don't  
22 really give us a number of years, you don't even come  
23 back and say "life" or "death", you answer a couple of  
24 questions then based on the answers to those questions  
25 the result is either life or death.

1                   Before we talk about capital murder,  
2                   though, I want to talk to you about what murder is and  
3                   isn't.

4                   The other group is filling out their  
5                   questionnaires. Now, normally I don't want people to  
6                   fill out the questionnaire until they have heard my  
7                   comments, unfortunately because of our space and the  
8                   number of people we had we couldn't get everybody in here  
9                   at once so you have already filled out your  
10                  questionnaires.

11                  Do all of you still have your  
12                  questionnaires?

13                  Based on what I say some of you may have  
14                  some different answers so if you feel like you need to  
15                  go back and change any answer feel free to do so before  
16                  you turn them in but what I want to do right now before  
17                  I get into capital murder is tell you what murder is and  
18                  isn't because, you know, based on reading this  
19                  questionnaire we want to know something about you and  
20                  about your feelings on the law and what your feelings are  
21                  on capital murder and what your feelings are on the death  
22                  penalty.

23                  I will have a lot of people fill out  
24                  that questionnaire before I talk to them about murder and  
25                  they say, "Well, I could give life in prison if it was

1 self defense or if it was an accidental killing I could  
2 see life in prison but if anybody killed anybody it has  
3 to always be death."

4 I want to explain to you what murder is  
5 because if a person acts out of self defense or if it's  
6 an accident he hasn't committed an offense, there's no  
7 murder, there is no punishment, there is absolutely  
8 nothing.

9 So when I'm talking to you and when the  
10 lawyers are talking to you about murder they are talking  
11 about the intentional taking of a life of another human  
12 being without legal justification or excuse, "I want to  
13 kill and I do it."

14 If I kill because I am defending another  
15 person I am not guilty of murder, if I kill because I am  
16 defending myself I am not guilty of murder.

17 I might walk out in my backyard, maybe  
18 I shoot a pistol up in the air, the bullet comes down and  
19 kills somebody. I am certainly responsible for that  
20 death but I had no intention to kill so I may not be  
21 guilty of murder. I am guilty of something but I'm not  
22 guilty of murder because in order to be guilty of murder  
23 I had to have intended that death occur.

24 You may certainly be guilty of negligent  
25 homicide but not murder.

1                   So when we are talking to you about  
2 murder and are you able to consider probation for murder  
3 and are you able to consider the full range of punishment  
4 in capital murder which include life or death you need  
5 to know what murder is or isn't and that's why we are  
6 talking about it.

7                   In our state a person who is accused of  
8 murder is looking at a punishment range to a minimum of  
9 five years to a maximum of 99 years or life.

10                  I want to talk to you about murder and  
11 murder punishment because in a capital murder case there  
12 is always a possibility that the jury instead of finding  
13 that a person is guilty of capital murder they may find  
14 that a person is only guilty of murder and if so you are  
15 going to be called upon to assess punishment so we know  
16 you need to know what the punishment is and we need to  
17 know whether you can follow the law and follow the  
18 punishment range and the punishment range for murder  
19 includes probation in this state if you as a jury set  
20 punishment at 10 years or less then you have to decide  
21 whether that sentence will be served in prison or on  
22 probation.

23                  If you set punishment over 10 years  
24 probation is not an option so if you have a 15 year or  
25 20 or 30 year sentence you don't ever get to the issue

1 of probation. You only get to probation if you go back  
2 and decide 10 years or less is appropriate.

3 So if you have decided that five, six,  
4 seven, eight, nine or 10 is appropriate then you decide  
5 whether this is to be served in prison or served on  
6 probation.

7 A lot of people think probation is just  
8 a slap on the wrist and I guess maybe some people have  
9 a right to look at it that way.

10 Also I want you to make sure that you  
11 understand the distinction between "probation" and  
12 "parole."

13 "Probation" is what happens before you  
14 go to prison, "parole" is what happens after you get out  
15 of prison.

16 So if you serve a prison sentence, not  
17 completely served, they let you out on parole.

18 If you have been found guilty of a crime  
19 and the jury or Judge decide that you should have a  
20 probated sentence instead of going to prison you don't  
21 go to prison, you serve probation first.

22 So we are talking about probation.  
23 Probation conditions are determined by the court or  
24 Judge, you the jury will decide whether the person is  
25 guilty, whether he should go to prison or be probated but

1 the Judge sets the probation conditions.

2 They include the fact that the defendant  
3 has to report to the Probation Department, it can be  
4 weekly or monthly, he has to remain in a specified county  
5 where he lives, he has to support his dependents, undergo  
6 random urinalysis, he's entitled to have somebody check  
7 on him at his home, at his office and if he violates any  
8 of his conditions that probation can be revoked.

9 If it's revoked it's done in a hearing  
10 without a jury, it's just between the Judge and the  
11 defendant and his lawyer and the State's lawyer.

12 You as the jury put the person on  
13 probation, the Judge sets the term.

14 And the way I kind of explain to people  
15 is if I give you probation you don't have the same rights  
16 that other people have. You only have the rights that  
17 I give and if you do something that I tell you not to you  
18 go to prison. It's very possible for a person to be on  
19 probation 10 full years, the last day of that probation,  
20 maybe that person tests positive for cocaine use, I can  
21 revoke his probation and send him to prison for 10 years  
22 so he spends 10 years on probation and he screws up on  
23 the last day and he's gone. So it's not always a  
24 cakewalk.

25 Sometimes it is quite appropriate, on

1 many occasions, and sometimes, frankly, it is not. So  
2 that's why we have a jury to make that determination.

3 I'm sure you are saying to yourself,  
4 "Wait a minute, Judge, you are saying that murder is the  
5 intentional taking of a life without legal justification  
6 and now you are telling me somebody can be probated."

7 Yes. That's what I'm telling every one  
8 of you.

9 You notice when I talk to you about  
10 murder is -- I didn't talk about motivation, the State  
11 does not have to prove why a murder occurred and,  
12 frankly, it doesn't matter, if a murder occurred, it  
13 occurred. It either happened or it didn't happen. Why  
14 it happened is immaterial to the issue of whether it did  
15 or didn't happen but motivation very well being something  
16 a jury looks to when they set punishment, that motivation  
17 could be out of love, hate, it could be a mercy killing,  
18 it could be a stalking, you could have one of the meanest  
19 people that you ever met commit the murder, it could be  
20 somebody that committed the murder because of some very  
21 unusual circumstances.

22 I have heard many murder cases in the  
23 last 10 years and I have heard many reasons that murders  
24 occur. I have heard murder cases where I think life in  
25 prison is not enough and I have heard cases, murder cases

1 where I think probation is appropriate.

2 There is going to be some of you out  
3 there telling me that you could never give probation in  
4 a murder case and there's going to be some of you telling  
5 me that you could never give life in a murder case. If  
6 that's the way you truly feel we are not going to take  
7 exception with you but to be on any jury involving a  
8 murder case where probation is an issue you are going to  
9 have to be able to tell us that you can think of a case  
10 where you think probation is appropriate, you can  
11 consider it and give it.

12 You also have to be able to tell us if  
13 you see a case where you think life is appropriate you  
14 can consider it and give it.

15 "Considering it" means more than just  
16 "Okay. I have considered probation now let's get down  
17 to putting this guy away."

18 When I say, "Consider probation" I mean  
19 actually consider giving it in a given case.

20 Something like, and I have heard it in  
21 another case, a person is going to buy a new car, the  
22 person makes \$30,000 a year, he wants a \$300,000 Rolls  
23 Royce, he can certainly consider buying it but he doesn't  
24 have the ability to buy it, he can't buy it.

25 And when I talk about your ability to



1 consider probation I'm not talking about your ability to  
2 consider that Rolls Royce then go buy something else, I'm  
3 talking about in order to be qualified you have to not  
4 only consider it but giving it in an appropriate case and  
5 if you can't just tell us.

6 Now, what is murder, what is capital  
7 murder?

8 I have told you what murder is.

9 Capital murder is murder plus.

10 A capital murder occurs if the murder  
11 occurs during the commission of another offense, if a  
12 person is burglarizing a home and commits a murder it's  
13 capital murder.

14 If a person is robbing another person  
15 and kills it's capital murder, if a person kills a  
16 fireman or policeman while on duty when that fireman or  
17 policeman is on duty it's capital murder. If a person  
18 hires another person to commit a murder that's capital  
19 murder, if a person kills two or more people in a  
20 criminal episode or transaction that's capital murder.

21 So capital murder is a murder, an  
22 intentional killing that occurs during the commission of  
23 another offense.

24 Now, I told you earlier that you might  
25 find a person guilty of murder but not capital murder and

1 that could very well happen where you find the person may  
2 have committed a murder but maybe not the other offense,  
3 maybe he didn't do or try to do a robbery or burglary or  
4 an arson, you might find the person didn't commit the  
5 murder but he committed arson for robbery so you have  
6 kind of two charges in a capital murder. You have the  
7 underlying charge, the robbery, burglary or whatever and  
8 then the death. So if you find as to capital murder you  
9 have to find the murder during the other offense and if  
10 you find just one or the other occurred it's not capital  
11 murder and you go back and determine the appropriate  
12 punishment.

13 That's why I talked to you about taking  
14 into consideration the full range of punishment.

15 If you did so find a person guilty of  
16 capital murder, you find that murder occurred during the  
17 commission of another offense then you don't set  
18 punishment by determining the number of years, you will  
19 answer some questions, there will either be two or three  
20 questions submitted to the jury.

21 Now, for purposes of these questions we  
22 are assuming that you found a person guilty of capital  
23 murder. The first question will ask you whether or not  
24 you believe that the defendant will be a danger in the  
25 future.

1           If you believe the defendant will be a  
2 continuing danger to society in the future you answer  
3 "Yes."

4           If you don't think he will be a  
5 continuing danger in the future you answer "No."

6           If you answer "No" you don't go any  
7 further, if you answer "Yes" go to the next question, the  
8 second question may or may not be in the trial because  
9 I don't have enough of the facts to know whether or not  
10 it will be in the trial but the second question inquires  
11 as to whether or not the defendant did the killing or if  
12 he didn't whether he anticipated or intended that  
13 somebody be killed.

14           And if you determine "Yes" then you go  
15 to the third question and the third question is -- let  
16 me back up and explain a little bit by the way I look at  
17 our law; if a person is convicted of capital murder our  
18 law basically says that the appropriate punishment at  
19 that point is life because there can only be one of two  
20 punishments, life or death, so conviction of capital  
21 murder means life in prison period.

22           If the State wants to go further they  
23 have a right to seek the death penalty so once you have  
24 found a person guilty of capital murder we know the best  
25 that's going to happen to them is life. If the State

1 wants death then they have to convince you beyond a  
2 reasonable doubt that the appropriate punishment is death  
3 and they do that by submitting those questions and trying  
4 to prove that answer should be "Yes."

5 The law provides that the answer of "No"  
6 and the State has the burden like in the first part of  
7 the trial, the State has the burden of proving beyond a  
8 reasonable doubt all of the elements of the offense, they  
9 have to prove beyond a reasonable doubt that the person  
10 is guilty and in the punishment part of a capital murder  
11 trial they have to prove that the answers to those first  
12 two questions "Yes" and if they prove beyond a reasonable  
13 doubt to you and you answer "Yes" then the result is  
14 death.

15 That sometimes put a jury in a dilemma.  
16 You take an oath as a juror to return your verdict based  
17 on the law and the evidence, you found a person guilty  
18 of capital murder, you believe that the evidence proves  
19 that the person will be a danger to society so you have  
20 to answer "Yes", you believe that person intended to kill  
21 or caused the death, you answer that "Yes."

22 Now, you know that those two "Yes  
23 answers" equate to death but there is something down  
24 inside you, there is something about that defendant,  
25 there is something you have heard during the trial that

1 just makes you not really convinced that death is  
2 appropriate so you have got a dilemma. You have taken  
3 an oath to base your verdict on the law and evidence so  
4 to give life you have got to change one of those answers  
5 to "No."

6 You are violating your oath, that is  
7 wrong so we are going to give a third question, it's kind  
8 of an escape valve, the third question is based on all  
9 the evidence, based on the blameworthiness of the  
10 defendant, based on mitigating circumstances do you think  
11 that he should or shouldn't die and if you answer we  
12 don't think there's enough evidence to justify sparing  
13 his life he's executed, if you say "Yes" that's based on  
14 certain facts and you don't have to tell us what the  
15 facts are but if you say, you know, I think there's some  
16 mitigating circumstance and you answer that question  
17 "Yes" then it's going to be a life sentence.

18 A lot of people have told me -- I have  
19 done 16 of these -- a lot of people have told me that if  
20 they find a person guilty of capital murder they think  
21 that the appropriate sentence is always going to be  
22 death.

23 That's what we call somebody, that's  
24 what we say, "They are death prone" and if you are death  
25 prone and you believe anybody guilty of capital murder

1 should always be given the death penalty you are not  
2 going to be qualified for this jury.

3 The law requires that at the end of the  
4 capital murder the guilt or innocence stage that you  
5 reexamine all of the evidence before you answer those  
6 questions, they are not automatic.

7 If the fact that a person is guilty of  
8 capital murder is always going to cause you, regardless  
9 of the facts, to answer those questions to result in  
10 death then there would be no need for those questions,  
11 there would be absolutely no need for witnesses, just  
12 execute everybody guilty of capital murder. And that's  
13 not the way we do, you have to be able to reexamine the  
14 evidence because the State has the burden, like I said,  
15 it's presumed that it's life but the State wants death  
16 so they have to prove to you that death is appropriate.  
17 And if you think it's appropriate in every case they  
18 don't have much to prove to you, do they?

19 So that's why we are going to talk to  
20 you and that's why we want you to open up and share your  
21 opinions with us and frankly I don't care what your  
22 opinions are and I don't mean to be rude by that but I  
23 very much care that you tell us what those opinions are.  
24 I don't want anything out of you that you wouldn't want  
25 out of a jury if you were on trial. I just want you to

1 be fair with us, if you can do it, welcome aboard, and  
2 if you can't we'll see you down the line in another  
3 trial.

4 Okay. Let's talk about opinions for a  
5 moment, let's talk about O.J. Simpson, we all heard his  
6 case, haven't we, we have read, we have heard about it.

7 Do you have your mind made up whether  
8 he's guilty or not?

9 If you do you couldn't be on that jury  
10 but, you know, I don't think any of us really know for  
11 sure. I think we all have a good idea of what happened  
12 but I don't know that we know what happened out there.

13 We'll hear one news report one day, the  
14 next day we hear a news report saying that the other news  
15 report was false and then we'll hear the Judge say all  
16 of the reports are false.

17 The only people that are going to know  
18 what happened are the jury and until the trial is over  
19 then I guess we'll all know but during that trial that  
20 jury is going to hear the evidence and that's what they  
21 are going to base their verdict on. They are going to  
22 have to put out of their mind what they have heard or  
23 read and what their friends have told them and that's  
24 what you are going to have to do in this case or any  
25 other case.

1                   If you have read something about Mr.  
2     Wardlow you have got to disregard it, if you have heard  
3     something from your family or friends disregard it, if  
4     you can't disregard it then you are biased and if you are  
5     biased you don't belong on this jury. We have got to  
6     leave our biases and prejudices out in the hallway when  
7     we come into this jury room and sometimes we can't do it  
8     and if you can't tell me and if you can, great. But you  
9     base your verdict on the evidence and not your opinions,  
10    not your gut feeling, base it on the evidence.

11                  All right. We are going to bring you  
12    back individually for the questioning. When you leave  
13    here today we will contact you by telephone and tell you  
14    when to be back. Our first session will be on Tuesday  
15    and even though you are the second group you still may  
16    be in the first section because we are going to put all  
17    these questionnaires together and let the lawyers look  
18    at them then start calling and they won't necessarily be  
19    in numerical order, they may or may not be.

20                 None of you are going to be scheduled  
21    today, you will be called Monday. If you get a call on  
22    Monday and we ask you to be here Tuesday and you can't  
23    we will work with you and continue working with you and  
24    when we bring you back for individual discussion we will  
25    work and schedule with you. I don't mean that you can



1 tell me "Well, look, I don't have anytime between now and  
2 December", you are going to have to find some time for  
3 us but we will work with you and when you come back we'll  
4 bring three in the morning and three in the afternoon.  
5 If you are in the afternoon I hope we get to you, it may  
6 take five minutes for a juror, it may take two or three  
7 hours per juror when we start talking to you individually  
8 when you start opening up and we get a feel for you  
9 sometimes we can realize that you shouldn't be on this  
10 case and excuse you and sometimes we may talk to you for  
11 two or three hours before a decision can be made.

12 So if we bring in two or three people  
13 in the morning and talk to each of those people for two  
14 hours you afternoon people may get bumped and have to  
15 come back, we will work for that not to happen, I will  
16 do everything I can to work with you but I do have some  
17 -- some time constraints and I hope that each of you will  
18 be as patient in the upcoming weeks as you have been  
19 today.

20 There's a place in the questionnaire  
21 where you were asked if you plan to be out of Titus  
22 County. If so I'm sure you have already filled it out,  
23 if you have some kind of a trip we are not going to make  
24 you miss your trip to come talk to us, we are going to  
25 let you take that trip, we are not unreasonable.

1                   This trial will probably last two weeks,  
2 we have tentatively set it for November the 14th as a  
3 date, I seriously doubt if it will go, it will probably  
4 be the end of November, maybe even December.

5                   So when you talk to us individually if  
6 you have some vacation plans let us know when they are  
7 going to be and we'll work around the vacation plans, we  
8 are going to try to find 12 people that will all be  
9 together for two weeks without having to worry about  
10 outside influences or plans.

11                  All right. I believe I have pretty well  
12 covered everything.

13                  Mr. Old, do you have anything you wish  
14 for me to cover with the jury that I haven't covered?

15                         MR. OLD:     Nothing at this  
16 time, Your Honor.

17                         THE COURT:   Mr. Townsend?

18                         MR. TOWNSEND: Nothing, Your  
19 Honor.

20                         THE COURT:   Thank you again  
21 for your patience. You will be hearing from us. If you  
22 don't hear from us don't worry about it and in looking  
23 at the questionnaire some of you, frankly we may  
24 eliminate by looking at the questionnaires. If you  
25 don't hear from us and you want to call the District

1 Clerk's Office -- I know they don't like what I'm telling  
2 you -- but you have a right to call them and ask them  
3 where you stand.

4 Bobby, who do you want them to call at  
5 the District Clerk's Office?

6 THE DISTRICT CLERK: They can  
7 call anybody in there.

8 THE COURT: You can call  
9 anybody in the District Clerk's Office and tell them that  
10 you are a prospective juror on Wardlow case and you want  
11 to know if the jury has been selected.

12 I'm not going to call you and tell you  
13 that you have been dismissed but if you haven't heard  
14 from us within a few weeks and you get curious pick up  
15 the phone and call or come down.

16 If there's no questions I'm going to  
17 excuse you all.

18 You may turn in your questionnaires, if  
19 you need to redo the questionnaires after we talked  
20 please do so, otherwise turn them in and I will see you  
21 in one of those individual sessions.

22 Have a good afternoon.

23  
24 (Recess.)  
25

1 (The following occurred after the panel  
2 of potential jurors was dismissed:)

3  
4 THE COURT: Let's get on the  
5 record.

6 Officer, let me see this questionnaire.  
7 Have you had any problem filling this  
8 out?

9 THE POTENTIAL JUROR: Yes,  
10 sir.

11 THE COURT: What is the  
12 problem filling it out, just not understanding some of  
13 the questions?

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: Do you have  
16 problems reading some of these?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: Can you read this  
19 sentence right here, see, that's Number 1, can you read  
20 what that says? (Indicating)

21 The Court believes based upon what the  
22 juror has told me and my observation that he's impaired  
23 in his ability to read.

24 Mr. Old, Mr. Townsend, do you have any  
25 objection to excusing the juror?

1 MR. TOWNSEND: None, Your  
2 Honor.

3 THE COURT: Mr. Old?

4 MR. OLD: None.

5 THE COURT: Sir, we are going  
6 to excuse you and you don't have to fill that out.

7 Thank you very much.

8 Now, I do need your -- do you have your  
9 juror card with you?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Let me take that  
12 and we will turn it in so that we will know that you were  
13 here.

14  
15 (Handed to the Court.)

16  
17 THE COURT: Thank you. You  
18 have a good day.

19 For the record, the juror number is 188,  
20 "W.L. Police."

21  
22 (Recess.)

23  
24 THE COURT: Let the record  
25 reflect that there's no prospective jurors in the

1 courtroom, that the State and Defense is present and  
2 Defendant is ready.

3 Mr. Old?

4 MR. OLD: Mr. Wardlow has  
5 authorized me on his behalf to enter into an agreement  
6 with the State subject to the approval and acceptance of  
7 the Court, that as to juror questionnaires and as to  
8 answers on the first page which I will quote which refers  
9 to the death -- "With reference to the death penalty,  
10 which of the following statements would best represent  
11 your feelings."

12 And it's instructed that they circle  
13 that which does.

14 He has authorized me on his behalf to  
15 agree to question only people who answer "2" or "3."

16 Now, I inquire of the Court if we  
17 exhaust the twos and threes without getting a jury would  
18 it be the Court's instruction to go to 1, 4, 5 and 6 or  
19 to bring in more jurors?

20 THE COURT: Depends on the  
21 agreement between the State and Defense. If the State  
22 and Defendant want to only talk to twos and threes then  
23 we will eliminate every one off this panel except twos  
24 and threes and when those people are gone we will get a  
25 new group. If there's an agreement to talk to only the

1 twos and threes at this time we will put the rest at the  
2 end of the line and make a decision at that time.

3 Mr. Townsend?

4 MR. TOWNSEND: Let's just  
5 leave it with twos and threes.

6 THE COURT: And agree to  
7 eliminate the ones, fours, fives and sixes?

8 MR. OLD: Judge, my choice  
9 would be not to eliminate them at this time, by the time  
10 we exhaust the twos and threes we will be in a better  
11 position to know whether we want to or not. I think some  
12 of them will be eliminated anyway merely by their answers  
13 and I would like to question some jurors before I make  
14 those agreements.

15 MR. TOWNSEND: Let me back up,  
16 your agreement was going to be just the twos?

17 THE COURT: Let's go off the  
18 record.

19  
20 (Off the record discussion.)

21  
22 MR. OLD: Our offer is to  
23 question twos and threes as they appear on the shuffled  
24 list in the order they are in so far as we can for the  
25 convenience of the parties.

1 THE COURT: What you want to  
2 do then is, Mr. Old, is to shuffle our list, after the  
3 shuffle is done we will only schedule the twos and  
4 threes, we will not dismiss anyone from the other list,  
5 we talk to twos and threes and then when the twos or  
6 threes are exhausted if we don't have a jury there will  
7 be a decision made as to whether to talk to the ones,  
8 fours, fives and sixes or to get a new panel?

9 MR. OLD: That is my offer.  
10 Yes.

11 THE COURT: Mr. Townsend, the  
12 ball is in your court.

13 MR. TOWNSEND: I don't believe  
14 I can go along with that. I would go along with it if  
15 you add the ones along with the twos and threes. I would  
16 agree with the whole deal as he stated if you added the  
17 ones to the twos and threes.

18 THE COURT: Let's let the  
19 Defense and the Defendant have another conference and  
20 then we'll get back on the record.

21 Off the record.

22  
23 (Off the record discussion.)

24  
25 MR. OLD: Your Honor, so far



1 we are willing to go on the twos and threes with the  
2 agreement that was defined on the record.

3 THE COURT: Unless there is  
4 further agreement since the State is not willing to agree  
5 I'm going to have Mr. Wardlow entirely shuffle the list,  
6 I understood Mr. Townsend agrees to the Defendant  
7 shuffling the questionnaires.

8 I want the record to reflect that we  
9 have approximately 147 questionnaires, they are in about  
10 four different stacks, five stacks upside down on the  
11 Defense Counsel table and at this time, Mr. Wardlow, if  
12 you would like to just sort of realign them, you may do  
13 so now if you wish but don't look at the names.

14 Do we have them all now?

15 THE BAILIFF: I don't know if  
16 they are all here or not.

17 THE COURT: Four more people?  
18 Is that all of them?

19 THE BAILIFF: There's still  
20 more.

21  
22 (Off the record discussion.)

23  
24 (Recess.)

25

1 THE COURT: Okay. Let's get  
2 back on the record.

3 Let the record reflect that the shuffle  
4 has been done, that the State's attorney, Defense  
5 Attorney were present with the Court while we watched  
6 the Defendant do his own shuffle. The shuffle is  
7 complete.

8 I want the District Clerk to provide  
9 copies of the first 25 jurors to each side, we will go  
10 in a numerical order on the new shuffle unless there's  
11 an agreement reached otherwise.

12 So we are in recess until 10:30 Tuesday.

13  
14 (Record closed for October 6th, 1994.)

15  
16 (Whereupon Court was recessed until  
17 10:00 a.m., October 11th, 1994.)


18  
19  
20 \*\*\*\*\*

1 STATE OF TEXAS §  
2 COUNTY OF TITUS §

3  
4 I, Lloyd E. Billups, CSR #149 and  
5 Official Court Reporter in and for the 76th Judicial  
6 District, State of Texas, do hereby certify that the  
7 above and foregoing contains a true and correct  
8 transcription of the proceedings in the above-styled and  
9 numbered cause, all of which occurred in open court or  
10 in chambers on October 6, 1994 and were reported by me.

11 I further certify that this  
12 transcription of the record of the proceedings truly and  
13 correctly reflects the exhibits, if any, offered by the  
14 respective parties.

15 WITNESS MY HAND this 31<sup>ST</sup> day of  
16 January, 1995.

17  
18   
19 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER  
20 76TH JUDICIAL DISTRICT, STATE OF TEXAS  
21  
22  
23  
24  
25

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

3 Business Address: Drawer 1868  
4 Mt. Pleasant, Texas 75456-1868

5 Telephone Number: 903/577-6735

6 Transcribed By: Tandra K. Gibson  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25